

# TRANSCRIPT OF RECORD.

---

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, ~~1922~~ 1923

No. ~~100~~ 214

---

SUPREME LODGE, KNIGHTS OF PYTHIAS, PLAINTIFF IN  
ERROR,

vs.

GEORGE O. MEYER.

---

IN ERROR TO THE SUPREME COURT OF THE STATE OF NEBRASKA.

---

FILED FEBRUARY 8, 1923.

(29,382)

1891



(29,382)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1922.

No. 832.

SUPREME LODGE, KNIGHTS OF PYTHIAS, PLAINTIFF IN  
ERROR,

vs.

GEORGE O. MEYER.

IN ERROR TO THE SUPREME COURT OF THE STATE OF NEBRASKA.

INDEX.

	Original.	Print.
Caption in supreme court of Nebraska.....	1	1
Record from the district court of Otoe County.....	3	1
Index .....	3	1
Petition .....	5	1
Exhibit A to Petition—Certificate of membership of Louis J. Meyer with application for and change of beneficiary .....	7	2
Summons and service.....	20	12
Answer .....	22	13
Reply .....	25	16
Journal entry of trial.....	27	17
Amended answer.....	27	17
Reply to amended answer.....	38	25
Journal entry of judgment.....	41	26
Motion for new trial.....	43	28
Order overruling motion for new trial.....	45	29
Clerk's certificate.....	46	29
Bill of exceptions.....	48	30

	Original.	Print.
Service of bill.....	49	30
Index .....	51	31
Stipulation waiving jury trial.....	53	32
Stipulation as to facts.....	53	32
Exhibit 1 to Stipulation—Certificate of membership, fourth class, Endowment Rank of Order of Knights of Pythias of Louis J. Meyer.....	60	36
Exhibit 2 to Stipulation—Change of beneficiary by Louis J. Meyer.....	62	37
Exhibit 3 to Stipulation—Application of Louis J. Meyer for transfer in fourth class.....	76	47
Exhibit 3-A to Stipulation—Certificate of membership of Louis J. Meyer, second class, Endowment Rank of Knights of Pythias.....	77	48
Exhibit 4 to Stipulation—Application of Louis J. Meyer for change of beneficiary.....	78	49
Exhibit 5 to Stipulation—Letter, W. O. Powers to L. J. Meyer, May 18, 1911.....	80	50
Exhibit 6 to Stipulation—Act to incorporate the Su- preme Lodge of the Knights of Pythias (28 U. S. Stat. at Large, 96-97).....	81	50
Exhibit 7 to Stipulation—Record in U. S. district court for the district of Indiana in case of Holt <i>et al. vs.</i> Supreme Lodge, Knights of Pythias.....	82	51
Index .....	82	51
Bill of complaint.....	84	53
Answer .....	112	72
Amendment to answer.....	141	92
Order of continuance.....	145	95
Replication .....	145	95
Order of continuance.....	146	96
Amended answer.....	147	96
Stipulation that replication to answer may be taken as replication to amended answer.....	182	120
Order of continuance.....	182	121
Order appointing special master.....	182	121
Order of continuance.....	183	121
Petition of defendant for leave to file cross-bill..	183	121
Notice of petition and service.....	188	125
Cross-bill of defendant.....	189	125
Exhibit to Cross-bill—Answer in case of Heim- soth <i>et al. vs.</i> Supreme Lodge, Knights of Pythias <i>et al.</i> in the circuit court of the United States for the district of Indiana....	190	126
Replication to answer in same case.....	220	148
Decree <i>pro confesso</i> in same case.....	222	149
Amendment to answer in same case.....	222	150
Supplemental bill of complaint in said case .....	226	153
Answer to supplemental bill in same case.	229	156

	Original.	Print.
Amendment to answer to supplemental bill in same case.....	232	158
Amendment to answer and supplemental answer in same case.....	234	160
Intervening petition of W. R. Petree in same case.....	236	161
Stipulation as to intervening petition in same case.....	238	162
Master's report in same case.....	240	165
Decree in same case.....	288	200
Answer to cross-bill.....	294	204
Stipulation as to supplemental answer.....	297	207
Order of continuance.....	298	207
Master's report.....	298	208
Findings of fact.....	299	208
Conclusions of law.....	346	244
Complainant's exceptions to master's report.....	346	244
Stipulation as to issues of case of Heimsoth <i>vs.</i> Su- preme Lodge, Knights of Pythias.....	350	247
Decree .....	354	250
Clerk's certificate.....	354	250
Judge's certificate to clerk.....	355	250
Clerk's certificate to judge.....	355	251
Exhibit 8 to Stipulation—Opinion, Sanborn, J., in U. S. circuit court of appeals for the seventh circuit in case of Holt <i>et al.</i> <i>vs.</i> Supreme Lodge, Knights of Pythias.....	356	251
Exhibit 9 to Stipulation—The Supreme Constitution of the Order of Knights of Pythias.....	361	255
Exhibit 10 to Stipulation—Extracts from Supreme Constitution and Statutes of Supreme Lodge, Knights of Pythias.....	374	264
Exhibit 11 to Stipulation—Extracts from Supreme Statutes of Supreme Lodge, Knights of Pythias.....	410	289
Exhibit 12 to Stipulation—Table of rate of monthly payments according to age and amount of insur- ance .....	416	293
Testimony of Walter O. Powers.....	417	294
George A. Bangs.....	435	305
Walter O. Powers (recalled).....	445	313
Order settling bill of exceptions (volumes I and II).....	451½	317
Clerk's certificate to bill of exceptions.....	452	317
Reporter's certificate.....	452	318
Bill of exceptions (volume 3).....	453	318
Testimony of D. W. Livingston.....	456	319
Reporter's certificate to volume 3.....	460	321
Clerk's certificate.....	460	321
Order settling bill of exceptions (volume 3).....	460	321
Præcipe .....	463	321
Notice of appeal.....	465	322
Bond for costs.....	467	323

	Original.	Print.
Motion and stipulation for advancement.....	470	323
Order setting cause for hearing.....	473	324
Motion and stipulation extending time to file briefs.....	475	325
Order extending time.....	477	325
Argument and submission.....	478	325
Judgment .....	479	326
Opinion, Dean, J.....	481	326
Dissenting opinion, Letton, J.....	483	327
Motion for rehearing.....	485	327
Order overruling motion for rehearing.....	488	329
Motion and stipulation for recall of mandate.....	491	330
Order directing recall of mandate.....	493	331
Petition for writ of error.....	496	331
Assignments of error.....	499	332
Order allowing writ of error and fixing bond.....	505	335
Bond on writ of error.....	507	336
Writ of error.....	515	340
Citation and service.....	517	341
Præcipe for transcript.....	519	342
Stipulation as to transcript.....	521	343
Certificate of lodgment.....	523	343
Clerk's certificate.....	524	344
Return to writ of error.....	525	344
Stipulation to consolidate with No. 833 and that record in No. 833 need not be printed.....	526	345

No. 22706.

MEYER

v.

SUPREME LODGE, KNIGHTS OF PYTHIAS.

Pleas before the Supreme Court of the State of Nebraska, at a term thereof begun and holden at the Capitol in the City of Lincoln, in said State on the 18th day of September, 1922.

Present: Hon. Andrew M. Morrissey, Chief Justice, Hon. Charles B. Letton, Judge, Hon. William B. Rose, Judge, Hon. James R. Dean, Judge, Hon. Chester H. Aldrich, Judge, Hon. George A. Day, Judge, Hon. Leonard A. Flansburg, Judge.

Attest, H. C. Lindsay, Clerk.

Be it remembered, That on the 30th day of March, 1922, there was filed in the office of the Clerk of said Supreme Court a certain Transcript, in the words and figures following, to wit:

[Omitted in printing.]

[Title omitted.]

[Title omitted.]

**PETITION.**

(Filed Dec. 15, 1916.)

Comes now the plaintiff and for his cause of action against the defendant alleges:

1. That the defendant is, and at all times herein mentioned was, a fraternal order or organization maintaining a life insurance department for its members, organized and existing under an act of the United States Congress, in the District of Columbia, and having its principal offices and place of business in the City of Indianapolis in the State of Indiana, and duly authorized to transact its business in the State of Nebraska.

2. That on and prior to the 11th day of June, 1885, Louis J. Meyer, a resident of Otoe County, Nebraska, was a member of a subordinate lodge of the defendant, and on said date the said defendant issued and delivered to the said Louis J. Meyer in Otoe County, Nebraska its membership certificate No. 4651, by the terms of which it insured the life of the said Louis J. Meyer in the sum of \$2,000.00, and agreed in the event of his death to pay that sum to a beneficiary therein named. That on or about the 31st day of May, 1910, the said Louis J. Meyer surrendered said certificate to the defendant for the sole purpose of changing the beneficiary therein named, and thereafter the defendant issued in lieu thereof to the said Louis J.

Meyer its certificate of membership dated June 30, 1910, numbered 4651, insuring the life of the said Louis J. Meyer in the sum of \$2,000.00, by the terms of which the defendant agreed that in the event of the death of the said Louis J. Meyer to pay to George O. Meyer, this plaintiff, the sum of \$2,000.00, a copy of which membership certificate is hereto attached, marked Exhibit "A," and made a part hereof.

6 3. That on the 11th day of April, 1916, the said Louis J. Meyer died in Nebraska City, Otoe County, Nebraska, being a resident of said city and county. That at the time of his death said Louis J. Meyer had fully performed all of the things required of him to be performed by the defendant and since his death this plaintiff as such beneficiary has performed all of the things required of him to be performed by the defendant, but that the defendant has refused and still refuses and fails to pay to this plaintiff the sum of money named in the said membership certificate, or any part thereof.

Wherefore plaintiff prays for judgment against the defendant in the sum of \$2,000.00, together with interest at the rate of seven per cent from this date, and for costs, and further that the court upon rendering judgment against the defendant shall allow the plaintiff a reasonable sum as attorneys' fees in addition to the amount of his recovery, to be taxed as a part of the costs in this case. George O. Meyer, Plaintiff, by Livingston & Heinke and A. S. Churchill, his Attorneys.

STATE OF NEBRASKA,  
County of Otoe, ss:

George O. Meyer being first duly sworn deposes and says that he is the plaintiff in the above entitled cause; that he knows the contents of the foregoing petition, and that all of the allegations therein contained are true as he verily believes. George O. Meyer.

Subscribed in my presence and sworn to before me this 15th day of December, 1916. (Seal.) My com. exp. Oct. 13, 1921. Julien R. Stevenson, Notary Public.

7

### EXHIBIT "A" TO PETITION.

Fourth Class.

*Certificate of Membership.*

Change of Beneficiary.

No. 4651.

\$2,000.

The Knights  
Supreme Lodge, K. O. P. of Pythias.

Insurance Department.

This certifies That in consideration of the warranties, promises and agreements made in this application, Louis J. Meyer has been ac-



cepted as a member of the Fourth Class of the Insurance Department; and, relying upon said war-anties, promises and agreements,

The Supreme Lodge Knights of Pythias promises to pay, at the head office of its Board of Control, unto George O. Meyer his son beneficiary of said member, subject to his right to change the beneficiary as hereinafter provided, the sum of Two Thousand Dollars upon the receipt and approval of satisfactory proofs of the fact and cause of the death of the said member while this certificate is in full force, the amount of any indebtedness on account of this Certificate being first deducted therefrom, and upon the surrender of this Certificate;

Subject, however, to the following conditions which are expressly assented to by the member:

1. The contract evidenced hereby shall not begin until twelve o'clock noon of the day of the date hereof, and then the Supreme Lodge Knights of Pythias, hereinafter called the Society, will not be liable unless the said member has actually paid the membership fee and made the first monthly payment required while said member is in good health.

2. The charter, all the laws, rules and regulations of the Society governing the Insurance Department now in force and as the same may be hereafter changed, altered, added to, amended and repealed, together with the said application contained in parts One and Two of said application are contained on pages 2, 3 and 4 hereof.

3. The Supreme Lodge Knights of Pythias is incorporated, and is an Fraternal Beneficiary Society, and no officer or representative thereof or of any subordinate body thereof, has any right or power by any statement, agreement, promise or manner of transacting business, to waive the provisions or requirements of the contract between the member and the Society, or of the laws, rules and regulations of the Society.

4. The member shall not have any divisible interest in  
8 any of the funds and properties of the Society, nor any lawful claim during his lifetime to any part thereof, nor the right to have any portion thereof applied to the maintenance of this Certificate.

5. This Benefit Certificate is issued and accepted by the parties in interest subject to all the provisions and conditions contained and referred to in the foregoing, and subject further, to the conditions, provisions and benefits contained on the 2nd, 3rd and 4th pages hereof, which are hereby made a part of this Certificate, and all the conditions and provisions of the contract between the member and the Society are conditions precedent to any liability of the Society hereunder and are to be deemed to be assented to and accepted without the necessity for the member's signature being affixed hereto.

In Testimony Whereof, Witness the signature of the President and General Secretary, respectively, of the Insurance Department, and the seal thereof affixed at Chicago, Illinois, U. S. A., this 30th day of June One Thousand, Nine Hundred and ten. Union B. Hunt, President. W. A. Jenkins, General Secretary. [Seal.]

(Second Page.)

Conditions, Provisions, and Benefits.

Monthly Payments and Occupation.

1st. The monthly payments required of the member under this contract are based upon his age at his nearest birthday to the date of his application, which is given as age 51, and his present occupation, warranted by him to be —. Each monthly payment required hereunder therefore is \$5.70, of which \$4.84 will belong to the Mortuary Fund of the 4th Class, and \$86 will belong to the Expense Fund of the Insurance Department. Said monthly payments will be due and payable to the Secretary of the Section to which this member belongs, without notice, in advance, on the first day of each and every month. Failure to make any such payment on or before the twentieth day of the month for which the same is due shall, ipso facto, from and after such date, forfeit this Certificate.

A member changing his occupation from that stated in this paragraph will be required to conform strictly to the laws and rules of the Society respecting same.

Assignment.

2nd. This Certificate cannot be assigned without the consent of the Board of Control, and then only in accordance with the laws of the Society.

Change of Beneficiary.

3rd. The beneficiary or beneficiaries named in this Certificate have no vested interest in same, and the beneficiary or beneficiaries may be changed at any time, and as often as the member may desire, upon the laws respecting the changing of beneficiaries being complied with. If there is a failure of designation of beneficiary hereunder the rule for such cases stated in the laws of the Society shall govern.

Cancellation of Certificates.

4th. The Board of Control may annul any Certificate held by a member which has been procured by misrepresentation or fraud, or whenever a member becomes addicted to habits or vices whereby his natural or life expectancy is or may be thereby shortened, or whenever it is discovered by the Board that a member has by some habit or vice already shortened his expectancy. But the Board's failure to act hereunder in any case shall not preclude or estop the Society from asserting any defense that it might have in the absence of this clause.

9

## Reinstatement.

5th. Upon this Certificate becoming forfeited by reason of the member failing to make any payment required within the time required, the same may be reinstated, as is provided therefor by the laws of the Society.

## Benefit Exempt from Debt.

6th. The Benefit provided to be paid hereunder will not be liable for, nor be subject to be appropriated to, the payment of any debts against the estate of the member.

Death by Suicide, Use of Intoxicating Liquors, Narcotics, Opiates, in a Duel, at the Hands of Justice, or in Violation of Criminal Law.

7th. If the death of the member holding this Certificate results from suicide, either voluntary or involuntary, whether the member be sane or insane at the time, or if his death be caused or superinduced by the use of intoxicating liquors, narcotics or opiates, or in consequence of a duel, or at the hands of justice, or in violation or attempted violation of any criminal law, then the amount to be paid on this Certificate shall be a sum only in proportion to the whole amount thereof, as the member's matured life expectancy is to his entire expectancy at the date of this Certificate, the expectation of life based upon the American Experience Table of Mortality to govern.

## Copies of Laws.

8th. A true copy of the several charters of the Society and of the laws of the Society governing this Certificate in force at this time is delivered to the member coincident with the delivery to him of this Certificate, and the same is attached to this Certificate. Additional copies will be furnished upon request, Copies of amendments and changes when made will be mailed to the member at his last known mail address on the books of the Society, and are to be by him attached hereto.

10

## Mailing Address.

9th. The member's mail address is as given in his application for this Certificate. No change of address will be valid, so far as this Certificate is concerned, until notice of such change has been received at the head office of the Board of Control.

Regular and Extra Monthly Payments, Right of Readjustment, and Increase of Contribution.

10th. The member holding this Certificate shall make all monthly payments as they may be due from him, and also make any extra or

special monthly payments required from him hereunder as called *the* — the Board of Control. His rate of contribution hereunder may be changed, increased or adjusted at any time in accordance with the laws of this Society when deemed necessary to carry out the purposes of the Insurance Department. The provision of this paragraph shall also apply to any paid-up certificate that may be issued by reason of this certificate, and also to this Certificate if it is commuted into an extended insurance contract.

### Proofs of Death and Limitation.

11th. Proofs of death satisfactory to the Board of Control shall be furnished to it free of expense within one year from the date of death of the member and no action at law shall be maintained unless suit is commenced within two years from the death of the member.

### (Copy of)

#### *Part One of Application for Membership in the Insurance Department.*

#### The Supreme Lodge of Knights of Pythias.

To the Board of Control:

The undersigned makes the following Part One of Application for membership in the Fourth Class of the Insurance Department of the Supreme Lodge Knight of Pythias.

11 For the purpose of securing the approval of Parts One and Two, constituting my said application, and my acceptance as a member of said class, the statements contained herein and below are made, and the answers to the questions are given, the truth of all of which I warrant:

#### Statements.

1. My name in full is — — —.
2. My residence is in — — —, County of — — —, State of — — —.
3. My Post Office address is — — —.
4. My present occupation or employment is — — —.
5. My occupation or employment for the last five years has been — — —.
6. I was born on the — day of — — —, A. D. 18—, in — — —, County of — — —, State of — — —, and my age at nearest birthday to this date is — years.
7. I am a member in good standing, of the Knight Rank of — — —, Lodge No. — — —, Knights of Pythias of the Grand Domain of — — —, and all dues and other charges against me in said Lodge are paid to the — day of — — —, A. D. 19—.
8. I desire admission to Section No. — of the Insurance Department.

9. I desire that a certificate or certificates be issued to me in the fourth class, payable as herein designated, viz:

- A. \$—, payable to ———, who is related to me as ———.
- B. \$—, payable to ———, who is related to me as ———.
- C. \$—, payable to ———, who is related to me as ———.
- D. \$—, payable to ———, who is related to me as ———.

(Third Page.)

### Questions and Answers.

12 1. Do you now hold a certificate in the insurance department? —. If you answer "Yes" then answer the following questions, viz.:

A. What is the certificate number? —. B. In what class was it issued? —. What plan? —.

2. Have you ever received a certificate in the Insurance Department which has been lapsed or forfeited? —. If you answer "Yes" then answer the following questions:

A. What is the certificate number? —. B. In what class was it issued? —. What plan? —.

3. Is your life now insured in any society or company? —. If you answer "yes," then give the names of the societies and companies and the amount in each, and date of contract in each. —.

4. Have you ever applied to any society or company, or to any agent or representative of a society or company, for insurance, without a certificate or policy of the exact kind and amount applied for being issued? —. If so, state names of societies, companies or representatives, dates, causes, and full particulars. —.

5. Have you paid the membership fee and first monthly payment required for the amount of insurance applied for? —. If so, to whom? —.

I do hereby declare and agree that all the foregoing statements, questions and answers, whether written by my own hand or not, are material to the risk proposed by this application, and that all the statements and answers are hereby warranted to be true.

I understand and do agree that the Supreme Lodge Knight- of Pythias is a fraternal beneficiary society, that said Insurance Department thereof is formed and carried on for the sole benefit of its members and their beneficiaries and not for profit.

I further understand and agree that if my said application  
13 for membership is accepted, constituting Parts One and Two thereof, that the said application, the Benefit Certificate or Certificates that may be issued thereon, the Charter, the Constitution and Statutes of the said Supreme Lodge now in force with any and all amendments thereto hereafter enacted by the said Supreme Lodge, and all the rules and regulations of the Board of Control of said Insurance Department as the same now exists or may from time to time be adopted, shall constitute the Contract of Insurance, between the undersigned and said Supreme Lodge, and I further agree that, as a member of said Insurance Department, if accepted I will be

governed and conform to, and my obligations and rights and those of my beneficiaries shall be governed and controlled by the said contracts. To all of which I willingly and freely subscribe.

Dated at ——— this — day of ———, A. A. 19—.

Actual date of signature of applicant, ———, ———, ———, Applicant. (Seal.)

Applicant must sign in person with first name in full.

Witness: ———. Give official title.

*Part Two of Application for Membership in the Insurance Department of the Supreme Lodge Knights of Pythias.*

To the Board of Control:

The undersigned makes the following Part Two of Application for membership in the Fourth Class of the Insurance Department of the Supreme Lodge Knights of Pythias.

For the purpose of securing the approval of Parts One and Two, constituting my said application, and my acceptance as a member of said class, the statements contained herein and below, and the answers to the questions given below are warranted to be true.

**Questions and Answers.**

- 14      1. Name of applicant: ———. Address: ———.  
           2. A. Are you now in good health? —. B. When were you last successfully vac-inated? ———.  
           3. A. Have you consulted a physician during the last five years? A. ———.  
               B. When and for what diseases? (Give other particulars under 6B.) B. ———.  
               C. Give the name and residence of such physicians. C. ———.  
               D. Give the name and residence of your medical adviser (or family physician, to whom you now refer for a certificate, if deemed necessary). D. ———.  
               E. Has any physician given an unfavorable opinion of your physical condition with reference to life insurance? E. ———.  
               F. Have you ever been advised by a physician to try a change of climate to benefit your health? F. ———.  
           4. State, as far as you know, the following particulars in regard to your grandparents, parents, brothers and sisters. ———.

*Family Record of the Applicant.*

	If living.		If dead.			
	Age.	Health.	Age.	Cause of death.	How long sick.	Previous health.
Father .....	....	.....	....	.....	.....	.....
Father's father.	....	.....	....	.....	.....	.....
Father's mother.	....	.....	....	.....	.....	.....
Mother .....	....	.....	....	.....	.....	.....
Mother's father.	....	.....	....	.....	.....	.....
Mother's mother.	....	.....	....	.....	.....	.....



15 Brothers or half-brothers: Living, —; Dead, —.

Sisters or half-sisters: Living, —; Dead, —.

5. A. Have any of your grand-parents, uncles, aunts, parents, brothers or sisters been afflicted with consumption? —. Raising of blood? —. Rheumatism? —. Insanity? —. Or with pulmonary, scrofulous, tuberculosis, cancerous or any hereditary disease? If, so, give particulars —.

B. Has there been, within the last three years among the members of your household, a cause of consumption? —.

C. State if any member of your household is now afflicted with consumption? —.

6. A. Have you ever had (answer "yes" or "No" to each):

Insanity? —. Jaundice? —.

Apoplexy? —. Chronic diarrhoea? —.

Paralysis? —. Fistula? —.

Dizziness? —. Piles? —.

*Apilemsy* or fits? —. Gall-stones or gravel? —.

Convulsions? —. Colic? —.

Delirium tremens? —. Dropsy? —.

Sunstroke? —. Syphilis? —.

Inflam-ation? —. Stricture? —.

Asthma? —. Cancer? —.

Bronchitis? —. Tumor? —.

Pneumonia? —. Scrofula? —.

Pleurisy? —. Discharge from ear? —.

Expectoration? —. Ulcer? —.

Consumption? —. Open Sores? —.

16 Spitting of Blood? —. Chronic rheumatism? —.

Habitual cough? —. Gout? —.

Shortness of breath? —. Varicose veins? —.

(Fourth Page.)

(Continued from Page 3.)

B. If any of the foregoing questions are answered "Yes," explain fully in the following form:

Disease or injury.	Date.	Duration.	Was recovery complete?	Name and address of medical attendant.
.....	.....	.....	.....	.....
.....	.....	.....	.....	.....
.....	.....	.....	.....	.....

C. Have you ever had an attack of appendicitis? —. How many? —. When was the last attack? —. Were you operated upon? —.

D. Did you ever have syphilis? —. How long ago? —. How long did you take treatment for same? —.

E. Have you scar or special mark of identification? —. If so, describe. —.

7. A. Have you ever had inflammatory or acute articular rheumatism? ——. If so, give particulars as to number of attacks, duration, dates, severity, &c. ——. Was it accompanied with shortness of breath or cough? ——.

B. Have you had any illness or injury other than as stated by you in question 6, or undergone any surgical operation? If so, state particulars:

Disease or injury.	Date.	Duration.	Was recovery complete?	Name and address of medical attendant.
.....	.....	.....	.....	.....
.....	.....	.....	.....	.....
.....	.....	.....	.....	.....

8. A. Have you hernia, or have you ever been reaptured? ——.

B. Did it ever become strangulated? ——. When last? ——.

C. Do you wear a suitable truss? ——.

D. Do you agree to wear a truss while insured, if ever ruptured? ——.

9. A. Have you ever used opium, morphia, Chloral or any narcotic, or taken treatment for any of these habits, or treatment for liquor or drug habit? If so, explain fully.) ——.

B. Have you ever attempted suicide? ——.

C. Do you smoke tobacco? ——. If so, in what form and to what extent. ——.

10. A. Have you ever used spirituous, vinous or malt liquors to excess? ——. (If "yes" give full information.) ——.

B. State the quantity you use each day of malt liquors. ——; wines, ——; spirituous liquors, ——.

C. Are you engaged in any way in the sale or manufacture of spirituous, vinous or malt liquors? ——.

11. A. What is your height? — ft., — in.

B. Weight? — lbs.

C. Has your weight recently increased? ——. Or diminished? ——. If so, to what extent and from what cause? ——.

I do hereby declare and agree that all the foregoing questions and answers, whether written by my own hand or not, are material to the risk proposed by this application, and said answers are warranted to be true.

I do further declare and agree that as a condition precedent to said Supreme Lodge being holden for any liability hereunder I will faithfully keep the said agreement above mentioned with reference to wearing a truss if ruptured.

I do further declare and agree for myself, my heirs, representatives and beneficiaries, that I do hereby waive any and all provisions of law or any state or country now or hereafter in force prohibiting or excusing any physician heretofore or hereafter attending me or any of my relatives, professionally or otherwise, from disclosing or testify to any information or knowledge acquired thereby, or making such physician incompetent as a witness; and I hereby consent and request that any such physician testify to and disclose

any information so derived or received in any suit or proceeding at law, or in equity, in which the benefit applied for may be involved, or in any trial or investigation within the tribunals of this society, involving my membership in said society, or the contract therein; and I further agree on behalf of my heirs, representatives and beneficiaries that as a condition precedent to such heirs, representatives or beneficiaries prosecuting any such suit or investigation involving my membership or contract in said society or the said Supreme Lodge being holden for any liability hereunder, shall, if called upon, in writing, by an attorney, solicitor or proper officer of such society in such suit or proceeding enter into, execute, make and deliver any waiver that may be required or permitted under the laws of any State or country, in order that such physician may be permitted to testify, and in order that this provision may be enforced at the option of said society.

To all of which I willingly and freely subscribe.

Dated at ——— this — day of ———, A. D. 19—. Actual date of Signature of Applicant: ———, ———, ———, Applicant.  
(Seal.)

Witness my — Dr. ———. Address: ———.

(End of part Two.)

Copy.

# **APPLICATION FOR CHANGE OF BENEFICIARY IN THE INSURANCE DEPARTMENT OF THE SUPREME LODGE, KNIGHTS OF PYTHIAS.**

To the Board of Control:

The undersigned makes application for change of beneficiary, in accordance with the provisions of Sec. 490, Supreme Statutes, Insurance Department Laws, Sec. 31, Chap. 6 and Sec. No. 492, Supreme Statutes, Insurance Department Laws, Sec. 33, Chap. 6 and for that purpose respectfully submits the following:

Benefit Certificate in the 4th Class, Plan —, Insurance Department, No. 4651, was issued on the 11th day of June A. D. 1885 to the undersigned, which certificate is hereby surrendered for cancellation upon the issuance to the undersigned of a certificate or certificates in lieu thereof in accordance with this application. The warranties, statements and agreements binding upon the undersigned under said surrendered certificate, except in so far as they are modified by this application or the laws now in force governing the Insurance *governing the Insurance* Department, are to be considered as here repeated; and enter into and become a part of the contract to be evidenced by the certificate or certificates hereby applied for when issued.

I direct that a certificate or certificates be issued to me in the class and upon the plan as hereinafter designated to-wit:

1. In the 4th Class, on Plan (State what plan by name) —, for (State am't on this plan) \$2,000, payable to (Write plainly first and last name of beneficiary) George O. Meyer, who is related to me as (State kinship) son.

2. In — Class, on Plan (State what plan by name) —, for (State am't on this plan) \$—, payable to (Write plainly first and last name of beneficiary) — —, who is related to me as (State kinship) —.

3. In — Class, on Plan (State what plan by name) —, for (State am't on this plan) \$—, payable to (Write plainly first and last name of beneficiary) — —, who is related to me as (State kinship) —.

4. In — Class, on Plan (State what plan by name) —, for (State am't on this plan) \$—, payable to (Write plainly first and last name of beneficiary) — —, who is related to me as (State kinship) —.

20 I warrant the truth of the statements with reference to kinship of the proposed beneficiary or beneficiaries.

Witness my hand and seal this 31st day of May A. D. 1910.  
(Signed) Louis J. Meyer. [Seal.] Member must sign in person and with first name in full.

Witness: D. W. Livingston.

I certify to the identify of the member signing the above. E. D. McCallum, Secretary of Section No. 106.

NOTE.—Change of beneficiary can be made only in accordance with the provisions of the Supreme Statutes referred to, and no change will be valid until application therefor upon this form is accepted by the Board of Control.

When signature of Section Secretary cannot be obtained, the member must acknowledge signature before an officer authorized to take acknowledgments, who will officially certify to his character and the date of expiration of his term of office.

If the new certificate or certificates applied for are to be issued in the Fourth Class, all record to the "Plan" may be eliminated by drawing pen through proper blank.

[Endorsement omitted.]

[Title omitted.]

### SUMMONS.

(Filed Dec. 26, 1916.)

The State of Nebraska to the Sheriff of Lancaster County, Greeting:

You are hereby commanded to Notify The Supreme Lodge, Knights of Pythias, Defendant that it has been sued by George O. Meyer, Plaintiff in the District Court of the Second Judicial Dis-

1 triet in and for said County of Otoe, and that unless it answer by the 15" day of January, A. D., 1917, the petition of said George O. Meyer, Plaintiff filed against it in the Clerk's office of said court, such petition will be taken as true and judgment rendered accordingly. You will make due return of this Summons on or before the 25" day of December, A. D. 1916. Witness my hand and the Seal of the said Court at Nebraska City, this 15" day of December, A. D., 1916. John C. Miller, Clerk. [Seal.]

263. Summons, District Court, Otoe County. No. 9139, Doc. 1, page George O. Meyer, Plaintiff, vs. Supreme Lodge, Knights of Pythias, Defendant.

Plaintiff prays for judgment in the sum of \$2,000.00, interest at seven per cent from December 15, 1916, attorney's fees and costs. John C. Miller, Clerk. Livingston & Heinke and A. S. Churchill, Plaintiff's Attorneys.

THE STATE OF NEBRASKA,

*Lancaster County, ss:*

I hereby certify that on the 22nd day of December, 1916, I served the within writ of summons on the within named The Supreme Lodge, Knights of Pythias, by delivering in person to W. B. Eastham, Insurance Commissioner for the State of Nebraska, two true and certified copies of same with all the endorsements thereon, all done in Lancaster County, Nebraska, as required by law. Gus A. Hyers, Sheriff, by Claud P. Hensel, Deputy.

Fees:

Service and return.....	\$ .75
Copy .....	.50
Mileage .....	.40
Total .....	<u>\$1.65</u>

[Endorsement omitted.]

2 [Title omitted.]

**ANSWER.**

(Filed May 8, 1917.)

Now comes the defendant in the above entitled action, and having withdrawn its demurrer filed herein, now makes answer to the petition of said plaintiff filed herein, as follows:

The said defendant referring to the first paragraph of said petition admits that it is a fraternal order and organization maintaining a life insurance department for its members, organized and existing under an act of the United States Congress, in the District

of Columbia, and having its principal offices and place of business in the City of Indianapolis in the State of Indiana, and duly authorized to transact its business in the State of Nebraska, and the said defendant in this behalf and with reference to the organization, power and authority of said defendant under said act of the United States Congress involves matters and things and questions arising under the laws of the United States, and involves the construction of said laws and the force, effect and extent of said act of Congress which only the courts of the United States can determine, and which only can be finally determined by the United States Supreme Court, to which in the event of an adverse decision herein the said defendant claims the right of an appeal.

The said defendant further answering said petition, and referring to the second paragraph thereof, admits that there was issued to said Louis J. Meyer, mentioned in said paragraph, the certificate of membership dated June 30, 1910, No. 4651, a copy of said membership certificate is attached to plaintiff's petition and marked exhibit A.

The said defendant further answering said petition and especially referring to the third paragraph thereof, admits that on the 11th day of April 1916, the said Louis J. Meyer died in Nebraska  
23 City, Otoe County, Nebraska, being a resident of said city and county.

The said defendant further answering said petition denies each and every allegation and statement in said third paragraph contained, and the said defendant also expressly denies that the original membership certificate, No. 4651, was an absolute insurance of the life of the said Louis J. Meyer in the sum of \$2,000.00, but that it was a conditional insurance and subject to all changes that said defendant might and could lawfully make under said act of Congress and the laws of the United States, and the said certificate was absolutely and unconditionally surrendered to said defendant at the time of making and accepting the certificate of membership dated June 30, 1910, No. 4651, and with reference to the surrender of said certificate the said defendant expressly denies that it was surrendered by the said Louis J. Meyer for the sole purpose of changing the beneficiary therein named.

The said defendant for further defense alleges, that said Louis J. Meyer failed, neglected and refused to pay his assessments and dues required to be paid under said certificate, No. 4651, from January, 1911, on to the time of his death, and that by reason of such failure, neglect and refusal the said certificate of membership of all the rights of said Louis J. Meyer become and were forfeited, and the said plaintiff by reason of such failure, neglect and refusal, has no right of recovery for any sum whatever in this action.

The said defendant for an additional and separate defense alleges, that under the right, authority and power vested and existing in said defendant it promulgated and made an increase of rates of insurance and the amount required to be paid by members of the class of which said Louis J. Meyer was a member, which rates became ef-



fective January 1, 1911, and of which the said Louis J. Meyer was duly notified and informed, and with reference to said increase of rates which were binding and effective on said Louis J. Meyer in the event of failure to pay future assessments and dues by said Louis J. Meyer, which said defendant alleges the said Meyer failed, neglected and refused to make, a forfeiture of all the rights of said Louis J. Meyer by reason thereof occurred and existed and has ever since existed, and with reference to the right and power of this defendant to so increase said rates an adjudication of the authority and power of said defendant so to do and of the validity of such raise in rates, the United States Court for the District of Indiana in the case of Holt, et al., vs. Supreme Lodge Knights of Pythias, has determined, adjudicated and finally decided and determined that said defendant in said case, and being the defendant herein, had the right, power and authority to so change and increase said rates, the said Holt being a member of said organization the same as said Louis J. Meyer, and the said United States District Court having full power and jurisdiction of the matters involved in said suit, and of said parties, and which decision so made this defendant alleges, is final, conclusive and resjudicate of the rights of said Louis J. Meyer and the rights of the plaintiff herein to recover in this action, and by reason of said decision and the determination of said questions by said court the said plaintiff is now barred and estopped from again litigating said questions and denying the conclusiveness of said decision in which the issues, as defendant alleges, were similar to the issues of this case, and which decision remains in full force and effect and has been in no manner changed, modified or reversed, and which decision held and finally determined that said defendant had the authority, right, and power to change and increase its said rates and that any such changes were binding and effective on its members, and that a failure, neglect or refusal to pay such increase rates resulted in and caused a forfeiture of the certificate of membership previously issued. W. J. Connell, Attorney for Defendant.

STATE OF NEBRASKA.

*Douglas County, ss:*

W. J. Connell being duly sworn says he is the attorney for the defendant named in the foregoing action, which said defendant is a corporation; affiant further says that he knows the contents of the foregoing answer and believes the facts therein stated to be true. W. J. Connell.

Subscribed in my presence and sworn to before me this 7th day of May, 1917. Bessie Janes, Notary Public. [Seal.]

[Endorsement omitted.]

[Title omitted.]

**REPLY.**

[Filed Dec. 20, 1917.]

Now comes the plaintiff in the above entitled cause and for reply to the answer of the defendant herein filed.

1. Denies that there is involved in this action the construction of any Act of the United States Congress, or matters and things in question arising under the laws of the United States which only the Courts of the United States can determine.

2. Further replying to said answer the defendant denies that the said policy of said insurance was a conditional one and subject to change by the said defendants and denies that the said original certificate was absolutely and unconditionally surrendered to the defendant at the time of the issuance of the certificate dated June 30, 1910, upon which suit is herein brought, but alleges that such surrender was as stated and alleged in plaintiff's petition.

3. Further replying to said answer this defendant denies that the said Louis J. Meyer failed, neglected and refused to pay his assessments and dues as required under said certificate from January, 1911, or at any other time and denies that the said certificate of membership and the rights thereunder became forfeited and  
26 plaintiff thereby barred from recovery thereon.

4. Further replying to the said answer the plaintiff denies that the said defendant was vested with authority or power on and prior to January 1, 1911, to promulgate and make an increase of the rates of insurance that affected the certificate or policy of the said Louis J. Meyer, deceased, and denies that any increases or changes of rates of insurance was promulgated by the said defendant affecting the said policy which became affected January 1, 1911, or at any other time, and denies that any change of rate of insurance made or pretended to be made by the said defendant affected the certificate or policy of insurance of the said Louis J. Meyer, Deceased, or binding upon or affective against him or this plaintiff on January 1, 1911, or at any other time and denies that any notice that any such attempt of change of rates given to the said Louis J. Meyer, and denies that by reason of any attempted change of rates on the part of the said defendant the said certificate or policy or insurance became forfeited but alleges that the same was in full force and effect at the time of the death of the said Louis J. Meyer and denies that there has been any adjudication of the authority and power of defendant to change or raise its rates or determine the validity of such rates by any Court having jurisdiction thereon that is binding upon this plaintiff or was binding upon the said Louis J. Meyer, in his life time.

5. Further replying to said answer this plaintiff denies each and every allegation of new matter contained in said answer not herein

specifically denied. George O. Meyer, Plaintiff, by Livingston & Heinke, and A. S. Churchill, His Attorneys.

STATE OF NEBRASKA,

*County of Otoe, ss:*

George O. Meyer, being first duly sworn, deposes and says that he is the plaintiff in the above entitled action, that he knows  
 27 the contents of the foregoing reply and that all of the allegations therein contained are true as he verily believes.  
 Geo. O. Meyer.

Subscribed in my presence and sworn to before me this 20th day of December, 1917. Mary Carmody, Notary Public. [Seal.]

[Endorsement omitted.]

[Title omitted.]

### JOURNAL ENTRY OF TRIAL.

Now on this 6th day of October, 1921, it being a day of the regular September, 1921, term of said court, this cause came on for hearing, and the defendant is given leave to amend by attaching paragraph to answer instanter. Jury waived and trial had to the court. Hearing to the Court evidence adduced, cause submitted to the Court and taken under advisement for the purpose of allowing parties to file briefs. Plaintiff given 15 days to file brief and defendant given 15 days thereafter to answer.

[Title omitted.]

### AMENDED ANSWER.

[Filed Feb. 26, 1921.]

Now comes the defendant in the above entitled action, and  
 28 by leave of court files this its amended answer to the petition of said plaintiff filed herein, as follows:

1. The said defendant referring to the first paragraph of said petition admits that it is a fraternal order and organization maintaining a life insurance department for its members, organized and existing under an act of the United States Congress, in the District of Columbia, and having its principal offices and place of business in the City of Indianapolis in the State of Indiana, and duly authorized to transact its business in the State of Nebraska, and the said defendant in this behalf and with reference to the organization, power and authority of said defendant under said act of the United States Congress alleges that its powers to do business, execute contracts and to change or raise the rates of insurance of its members in the different classes was derived from such grant of authority and power and involves matters and things and

questions arising under the laws of the United States, and this action and the claim of said plaintiff made herein involves the construction of said Act of Congress and the force, effect and extent of said Act, and the rights and powers of this defendant thereunder which only the courts of the United States can properly determine, and which only can be finally determined by the United States Supreme Court to which, in the event of an adverse decision herein by the state courts the said defendant gives notice and claims the right of an appeal, or to take proceedings in error to obtain a review of the said Supreme Court.

2. The said defendant further answering said petition, and referring to the second paragraph thereof, admits that there was issued to said Louis J. Meyer, mentioned in said paragraph, the certificate of membership dated June 30, 1910, No. 4651, a copy of said membership certificate is attached to plaintiff's petition and marked Exhibit "A".

29 3. The said defendant further answering said petition and specially referring to the third paragraph thereof, admits that on the 11th day of April, 1916, the said Louis J. Meyer died in Nebraska City, Otoe County, Nebraska, being a resident of said city and county.

The said defendant further answering said petition denies each and every allegation and statement in said third paragraph contained, and the said defendant also expressly denies that the original membership certificate, No. 4651, was an absolute insurance of the life of the said Louis J. Meyer in the sum of \$2,000.00 but alleges that it was a conditional insurance and subject to all changes that said defendant might and could lawfully make under said act of Congress and the laws of the United States, and further alleges that the said certificate was absolutely and unconditionally surrendered to said defendant at the time of making and accepting the certificate of membership dated June 30, 1910, No. 4651, and with reference to the surrender of said certificate the said defendant expressly denies that it was surrendered by said Louis J. Meyer for the sole purpose of changing the beneficiary therein named.

4. The said defendant for further defense alleges, that said Louis J. Meyer failed, neglected and refused to pay his assessments and dues required to be paid under said certificate, No. 4651, from January 1911 on to the time of his death, and that by reason of such failure, neglect and refusal the said certificate of membership and all the rights of said Louis J. Meyer become and were forfeited, and the said plaintiff, by reason of such failure, neglect and refusal has no right of recovery for any sum whatever in this action.

5. The said defendant for an additional and separate defense alleges, that under the right, authority and power vested and existing in said defendant under said Act of Congress and Acts amendatory thereof, it promulgated and made an increase of rates of insurance and the amount required to be paid by members of the class of which said Louis J. Meyer was a member; which rates become effective January 1, 1911, and of which the said Louis J.

30 Meyer was duly notified and informed and had full knowledge; and with reference to said increase of rates said defendant avers that such change and increase in the amount required to be paid by members of the fourth class was just, reasonable and necessary and that it had the authority and power to make such increase and to enact, adopt or pass the resolution or laws or take the action required to authorize such increase in rates, and such increase, laws or action were binding and obligatory on said Meyer, and in that behalf the said defendant further alleges that the said increase of rates and the enacting, adopting or passing of any resolution or law or taking any action authorizing such increase in rates, were in the nature of internal regulations and management of the insurance department of said defendant, and were binding and obligatory on said Meyer and also upon all members of said fourth class, regardless of where they lived or the State in which they might reside, and no member nor class of members had any greater right or privilege than any other member wherever he might be situated, and with reference to said increase in rates the said defendant further alleges, that notwithstanding the duty and obligation of said Meyer to pay the same, he purposely failed, neglected and refused to pay said dues from said date to the time of his death, and a forfeiture of all the rights of said Meyer, by reason thereof thereupon occurred and existed and has ever since existed.

6. And, with reference to the right and power of this defendant to so increase said rates an adjudication and determination of the authority and power of said defendant so to do and of the validity of such raise in rates, the United States Court for the District of Indiana in the case *Holt, et al., vs. Supreme Lodge Knights of Pythias* had adjudicated and finally decided and determined that said defendant in said case, and being the defendant herein, had the right, power and authority to so change and increase said rates, and that its said action in that behalf was reasonable, proper and necessary, and that said defendant *has* a representative form of government at the time it increased said rate of insurance; the said

31 Holt being a member of said organization and in the same class as said Louis J. Meyer, the said United States District Court having full power and jurisdiction of the matters involved in said suit, and of said parties, and which decision so made, this defendant alleges, is final, conclusive and *res judicata* of the questions, matters and things therein decided and is decisive of the rights of said Louis J. Meyer and the rights of the plaintiff herein to recover in this action, and holding, adjudicating, determining and finally deciding that no right of recovery, under the facts of this case existed, and by reason of said decision and the determination of said questions by said court, the said plaintiff is now barred and estopped from again litigating said questions or denying the conclusiveness of said decision in said case in which the issues, as defendant alleges, with reference to said questions were the same as the issues of this case, and which decision remains in full force and effect, and has been in no manner changed, modified or reversed, and which decision held and finally determined that said defendant

has a representative form of government at the time it increased said rate of insurance, and had the authority, right and power to change and increase its said rates and that such changes were binding and effective on its members, and that a failure, neglect or refusal of any member to pay such increased rates reculted in and caused a forfeiture of certificates of membership issued, and which said decision is and should be binding and conclusive on all courts, State as well as Federal, the same having been finally approved and affirmed by the Supreme Court of the United States, and failing or refusing so to do, defendant avers, constitutes a failure of due process of law within the Federal Constitution.

7. The said defendant further alleges with reference to the right and power of this defendant to so increase said rates and adjudication and determination of the authority and power of said defendant so to do and of the validity of such raise in rates, and that said defendant had a representative form of government at the time it increased said rates of insurance, was adjudicated and finally decided and determined by the Supreme Court of the United States on or about June 12, 1916, in the certain cause then pending in said court, wherein the Supreme Lodge Knights of Pythias, being this defendant, was plaintiff in error, and one S. Mims was defendant in error, the said Mims being a member of said defendant's organization in the 4th class the same as said Louis J. Meyer; said case in said Supreme Court of the United States being a proceedings in error to the court of civil appeals for the fifth Supreme Judicial District of the State of Texas, the said action being originally commenced in the District Court of Dallas County, State of Texas, about May 19th, 1911, and the petition of plaintiff in said case alleging that said raise of insurance rates was illegal and that the laws and proceedings providing for said raise of rates was wrongfully and illegally passed and promulgated; the answer of said defendant averring that said laws were just, reasonable and necessary, and that it had the authority and power to pass the same, and that said laws were binding and obligatory upon plaintiff in said case and that plaintiff's failure to comply with said laws operated as forfeiture of any rights he had under his certificate of insurance sued on in this case, and that its rights and also the claim of plaintiff were governed by and dependent upon defendant's Charter of Incorporation, its rules, laws and regulations, which contentions of this defendant were sustained by said Supreme Court of the United States in said action, the said United States Supreme Court having full power and jurisdiction of the matters involved in said suit and of the parties thereto, and which said decision of the United States Supreme Court so made, this defendant alleges is final, conclusive and res judicata of the questions, matters and things therein decided and is decisive of the rights of said Louis J. Meyer and the rights of the plaintiff herein to recover in this action, and by reason of said decision and the determination of said questions by said court, the said plaintiff is now barred and estopped from again litigating said questions or denying the conclusiveness of said decision in said case which decision remains in full force and effect and has been in



manner changed or modified, and which said decision is and should be binding and conclusive on all courts, State as well as Federal, and failing or refusing so to do, defendant avers, constitutes  
 33 a failure of due process of law within the Federal Constitution.

8. The said defendant further alleges that the application of said Louis J. Meyer and the certificate sued upon in this case and the conditions and provisions applicable thereto, required that said Louis J. Meyer should be governed and said contract of insurance should be controlled and determined by the laws and regulations of said defendant then in force or that might thereafter from time to time be enacted, and in that behalf this defendant further avers that its rights and also the claim of plaintiff herein, are governed by the dependent upon defendant's Charter of Incorporation and its rules, laws and regulations adopted or promulgated by said defendant, and the said Louis J. Meyer in dealing with this defendant and in accepting said certificate of insurance and executing the promise and agreement on the face of said certificate, did so with full knowledge of said rules, laws, charter and regulations, including the right to increase rates of insurance, and said plaintiff is now estopped from denying or controverting the right of this defendant to make and raise the rates of insurance in controversy herein.

9. Said defendant further answering said petition alleges that said defendant was duly created by an act of Congress in 1894; that its predecessor, of the same name, was organized under the laws of the District of Columbia in 1870; that said predecessor continued until 1890, when its charter expired; that from 1890 to 1894, said predecessor continued as a de facto corporation; that in 1877 said predecessor created what was then designated as the Endowment Rank of said order of Knights of Pythias; that membership in said rank was voluntary and limited to those who had attained the rank of Knight and who could pass satisfactory medical examination; that said endowment rank was continued at the creation of defendant and in 1906 the name thereof was changed from Endowment Rank to Insurance Department, which name has ever since  
 34 been retained; that all members of said Endowment Rank of defendant's predecessor were continued as members in the present defendant; that among the members so continued and retained was the plaintiff's decedent herein; that among those who were so continued were Joseph Holt and all others who were named as plaintiffs in the case of Holt, et al, vs. Supreme Lodge, as herein set out; that amongst said members so continued were all members of said predecessor who held certificates issued prior to 1894.

Defendant further alleges that in 1910 the Supreme Lodge of said defendant ascertained that the rates theretofore fixed were inadequate and would not produce funds sufficient to mature the certificates outstanding; that there was an increasing deficit due upon the cost of each holder of a certificate; that said supreme Lodge was through necessity required to take action for the relief of said department; that said Supreme Lodge did enact and promulgate a

statute fixing a schedule of rates, being the same rates now in force that the enactment of said statute and the promulgation of said rates caused more or less dissatisfaction among the members of said department of defendant and that, because thereof, Joseph Holt, Victor Manberret, Rose Carlin, and 17 others, all citizens and residents of the State of Louisiana, on behalf of themselves, and all others similarly situate, on January 25, 1911 filed their bill in equity in the United States District Court for the District of Indiana, alleging that said statute was invalid, wrongful and not binding upon them or anyone holding a certificate similar to theirs; and praying that the said court grant a writ or injunction restraining the defendant from putting into effect said statute increasing said rates and requiring the defendant to accept the old and prior rates; that the defendant duly answered said bill denying that said statute was invalid but asserted that it was valid and necessary to the further conduct of said defendant; that said cause was submitted by the said court to a master in chancery for a finding of facts and conclusions of law; that the said parties introduced their evidence and that after the introduction of all the evidence said master reported to said court his findings of fact, and his conclusions thereon;

35 that No. 3 of said findings was in part that "said original corporation was during its entire existence and said defendant is and has been since its incorporation a fraternal beneficiary society; that neither the defendant nor its said predecessor was ever conducted for profit; that each of said corporations during the entire period of their existence respectively possessed a lodge system and a ritualistic form of work and had a representative form of government." Defendant further alleges that said 27th finding of fact was in part: "That the legislature of the defendant with reference to the \* \* \* re-rating of the fourth class, which became effective \* \* \* was all duly and legally adopted by the said defendant in pursuance to the constitution and laws of said defendant and in accordance with the mode therein prescribed for the adoption of amendments and the enactment of new legislation."

Defendant further alleges the Joseph Holt and all other plaintiffs in said suit were members of said fourth class, and that the said member whose certificate is sued upon in this case was also a member of said fourth class and that said member upon whose certificate the present action was founded was situate similarly in all respects as the plaintiffs in said suit in the said United States District Court.

Defendant further alleges that said District Court duly approved and adopted said finding and entered a decree in favor of the defendant dismissing said bill for want of equity and rendering a judgment for costs in favor of defendant against the plaintiffs; that thereupon plaintiffs prayed an appeal to the United States Circuit Court of Appeals, which was granted; that said appeal was duly taken, briefed and argued orally; that said Circuit Court of Appeals rendered its decision upon the merits, affirming said judgment of the said District Court; that thereupon plaintiffs prayed an appeal to the Supreme Court of United States which was granted; that said appeal was dismissed by said plaintiff on the day of leaving the judg-

36      ments of said Circuit Court of Appeals, and of said District Court in full force and effect; that said Judgments have been since their rendition and are now in full force and effect and binding upon all who were or had been members of said court class prior to 1889, including the plaintiff's decedent, the said

Defendant further alleges that said judgments are entitled to full faith and credit, in this court, under Article Four, Section One, of the Federal Constitution, and also under Section 905 Revised Statutes of the United States, and that said judgments ought to estop the plaintiff from alleging or asserting that said statute of 1910, raising the rates is invalid or unenforceable against this plaintiff or the assured upon whose certificate this action is based; and that the plaintiff ought further to be estopped from alleging or asserting that the defendant does not have and maintain a representative form of government, and which said judgments, as hereinbefore stated, should be and are binding and conclusive on all courts, State as well as Federal, and failing to so consider and determine herein would constitute a failure of due process of law within the Constitution of the United States and would also be in violation of Article Four Section 1, of the Federal Constitution providing that full faith and credit shall be given to the public acts, records, and judicial proceedings of every other state, and also, in violation of section 905 Revised Statutes of the United States, requiring full faith and credit to be given by the courts of one state to the records, public acts, and judicial proceedings of the courts of all other states and of the United States.

Said defendant further answering said petition alleges that the defendant's predecessor was a corporation of the same name as defendant and that it was organized under the laws of the District of Columbia; that in 1877 it organized as a part of its beneficial work a department for the insurance of those of its members who desired the same and who could conform to the requirements that those who so desired and who entered became members of what was called the Endowment Rank of the order; that the charter of said corporation legally expired in 1890; that it continued as a de facto corporation

37      from 1890 to 1894; that in 1894 the present defendant was created by a statute of the United States; that the governing body of this defendant and also of said predecessor was the supreme lodge; that the composition and the manner of selecting said supreme lodge of said predecessor and of this defendant were substantially the same as they were in the year 1910 at the time of the enactment of the statute raising the rates in question in this action; that the certificate of the plaintiff's decedent was executed in 1885; that the composition of said supreme lodge and the method of its selection was then substantially the same as in 1910; that the application of the plaintiff's decedent for membership in said rank contained the following agreement:

"I hereby agree that I will punctually pay all dues and assessments to which I may become liable and that I will be governed and this contract shall be controlled by all the laws, rules and regulations

of the order governing this Rank now in force or that may hereafter be enacted, or submit to the penalties therein contained."

Defendant further alleges that the certificate sued upon contains the following agreement:

"In consideration of the payment by said member of the prescribed membership fee and of the payment hereafter to said Endowment Rank of all monthly payments, assessments and dues as required, and the full compliance with all the conditions herein contained, and with the laws, rules and regulations, governing this Rank, now in force or that may hereafter be enacted by the Supreme Lodge \* \* \* the Board of Control will pay"

the amount stipulated; that subsequently in 1892, 1901, 1909 and 1910, extra assessments were made against the plaintiff's decedent and in 1894 and 1901 increases in rates were established and promulgated by said defendant and its predecessor and that said extra assessments and increased rates were duly paid by said plaintiff's decedent; that at the time of making said application, and of the execution of the certificate sued upon, and at the times of the enactment of the statutes raising said rates and of the making of extra assessments the composition and manner of selecting the Supreme lodge of  
38 defendant and said predecessor has been and was substantially the same as in the year 1910.

Defendant further alleges that the plaintiff by reason of the aforesaid facts ought to be estopped from alleging or asserting that the defendant in 1910 when the said rates in question were enacted did not maintain and have a representative form of government. W. J. Connell, Attorney for Defendant.

STATE OF NEBRASKA,  
Douglas County, ss:

W. J. Connell being duly sworn says he is the attorney for the defendant named in the foregoing action, which said defendant is a corporation; affiant further says that he knows the contents of the foregoing amended answer and believes the facts therein stated to be true. W. J. Connell. W. J. Connell.

Subscribed in my presence and sworn to before me this 25th day of February, 1921. [Seal.] Bessie Janes, Notary Public.

Subscribed in my presence and sworn to before me this 6th day of October, 1921. [Seal.] My com. exp. July 2, 1925. John C. Miller, Notary Public.

[Endorsement omitted.]

[Title omitted.]

**REPLY.**

[Filed Apr. 14, 1921.]

Comes now the plaintiff in the above entitled cause and for reply to the amended answer of the defendant filed herein:

39 1. Denies that there is involved in this action the construction of any act of the United States Congress or matters and things in question arising under the laws of the United States which only the Courts of the United States can determine.

2. Further replying to said answer the defendant denies that the said policy of said insurance was a conditional one and subject to change by the said defendant and denies that the said original certificate was absolutely and unconditionally surrendered to the defendant at the time of the issuance of the certificate dated June 30, 1910 upon which suit is herein brought; but alleges that said surrender was as stated and alleged in plaintiff's petition.

3. Further replying to said answer the plaintiff denies that the said Louis J. Meyer failed, neglected and refused to pay his assessments and dues as required under said certificate from January 1st, 1911, or at any other time, and denies that said certificate of membership and the rights thereunder became forfeited and plaintiff thereby barred from recovery thereon.

4. Further replying to the said answer the plaintiff denies that the said defendant was vested with authority or power on and prior to January 1st, 1911 to promulgate and make an increase of the rate of insurance that affected the certificate or policy of the said Louis J. Meyer, deceased, and denies that any increases or changes of rates of insurance was promulgated by the said defendant affecting the said policy which became effective January 1st, 1911, or at any other time and denies that any change of rate of insurance made or pretended to be made by the said defendant affected the certificate or policy of insurance of the said Louis J. Meyer, deceased, or was binding upon or effective against him or this plaintiff on January 1st, 1911, or at any other time and denies that any notice of any such attempt of change of rates was given to the said Louis J. Meyer and denies that by reason of any attempt of change of rates on the part of the said defendant, the said certificate or policy of insurance became forfeited; but alleges that the same was in full force and effect at the time of the death of the said Louis J. Meyer, and denies that there has been any adjudication of the authority and power of the defendant to change or raise its rates or determine the validity of such rates by any Court having jurisdiction that is binding upon this plaintiff or was binding upon the said Louis J. Meyer in his life time.

40 5. That this cause and the issues involved herein have been heretofore tried in this Court and from the Court's judgment appealed to the Supreme Court of Nebraska, and on the appeal among the

issues before the Court for determination was the right, power and authority of this defendant to raise or change its rates of insurance and the validity of its pretended rates effective January 1st, 1911, and whether or not the defendant and its law making body and rate making body had a representative form of Government, and the said Supreme Court upon submission of said cause and on the 30th day of April, 1922, held and decided that the said defendant did not have a representative form of Government, and that it was without power or authority to raise or change its rates, and that the pretended rates of the defendant sought to be made effective January 1st, 1911 were void, and that the certificate or policy of insurance of the said Louis J. Meyer herein sued upon, did not become forfeited but was and is in full force and effect; that the opinion of said Court is reported in the 177 Northwestern Reporter at page 828; and said judgment and opinion is still in full force and effect, unchanged and unmodified, and the law as announced by the Court in its said judgment and opinion is the law of this case and controls this case and is res adjudicata of the issues presented by defendant's amended answer herein.

6. Further replying to said answer, plaintiff denies each and every allegation of new matter contained in said answer, not herein specifically denied. George O. Meyer, Plaintiff, by D. W. Livingston, His Attorney.

41

STATE OF NEBRASKA,  
County of Otoe, ss:

George O. Meyer, being first duly sworn, deposes and says that he is the plaintiff in the above entitled action, that he knows the contents of the foregoing reply, and that all of the allegations therein contained are true as he verily believes. George O. Meyer.

Subscribed in my presence and sworn to before me this 12<sup>th</sup> day of April, A. D., 1921. (Seal) My com. exp. Feby. 9, 1927. D. W. Livingston, Notary Public.

[Endorsement omitted.]

[Title omitted.]

### JOURNAL ENTRY OF JUDGMENT.

(Filed Mar. 1, 1922.)

This cause having been heretofore tried, submitted upon the pleadings and the evidence and written briefs by both plaintiff and defendant, and taken under advisement by the Court until this time and now on this 1st day of March, 1922, it being one of the days of the regular February, 1922 Term of said Court, this cause came on for judgment and decision and upon consideration of the pleadings, evidence and the law, the Court finds:

1. Generally in favor of the plaintiff and against the defendant and finds that all of the allegations of plaintiff's petition are true.

2. The Court further finds that there is due from the defendant to plaintiff the principal sum of \$2,000.00, together with  
42 interest thereon at the rate of 7% per annum from the 15th day of December, 1916, amounting to the sum of \$729.65 or a total sum of principal and interest of \$2,729.65, which amount draws interest from this date at the rate of 7% per annum.

3. The Court further finds that this cause was tried once before in this Court and from that judgment appealed to the Supreme Court where it was tried and the cause reversed and sent back to this Court for re-trial; that the plaintiff is entitled to have taxed as costs herein a reasonable sum as attorneys fees for the first trial in this Court and the Court further finds that plaintiff should have as attorneys fees for said trial the sum of \$200.00, taxed herein as his attorneys fees for said trial as costs. The Court further finds that from said first trial an appeal was taken to the Supreme Court where the cause was there tried and that plaintiff is entitled to have taxed as costs herein a reasonable attorneys fees for the service of his attorneys in the trial of said cause in the Supreme Court, and that plaintiff should have the sum of \$150.00, taxed herein as costs as his attorneys fees in the Supreme Court in said trial. The Court further finds that plaintiff is entitled to have taxed as costs herein a reasonable attorneys fees for the present trial of this cause in this Court and should have the sum of \$150.00 taxed herein as costs as his attorneys fees for the present trial of this cause.

It is therefore ordered, considered and adjudged by the Court that plaintiff have and recover from the defendant the principal sum of \$2,000.00 with interest thereon amounting to the sum of \$729.65 the same to bear interest from this date at the rate of 7% per annum.

It is further ordered, considered and adjudged by the Court that the plaintiff have and recover attorneys fees for the first trial of this cause in this Court in the sum of \$200.00, said amount to be taxed as costs herein.

It is further ordered, considered and adjudged by the Court that the plaintiff have and recover attorneys fees in the sum of \$150.00 for the services of his attorneys upon the appeal in the Supreme Court of Nebraska, said amount to be taxed as costs  
43 herein.

It is further ordered, considered and adjudged by the Court that the plaintiff have and recover attorneys fees for the present trial of this case in this Court in the sum of \$150.00 said amount to be taxed as costs herein.

To all of which findings and judgment the defendant excepts and defendant is allowed 40 days from rising of Court in which to prepare and serve its Bill of Exceptions. By the Court. James T. Begley, District Judge.

[Endorsement omitted.]



[Title omitted.]

### MOTION FOR NEW TRIAL.

(Filed Mar. 1, 1922.)

Now comes the defendant in the above entitled action and moves the court to vacate the judgment rendered herein, and grant unto said defendant a new trial for the following reasons affecting materially the substantial rights of said defendant, to-wit:

First. That the findings of said court are not sustained by sufficient evidence, nor are any of said findings sustained by sufficient evidence.

Second. That the findings of the court herein and each thereof are contrary to law.

Third. That the judgment rendered herein in favor of said plaintiff is not sustained by sufficient evidence.

44 Fourth. That said judgment rendered herein in favor of said plaintiff is contrary to law.

Fifth. That under the evidence in this cause and the law applicable to the facts, as shown by the testimony, the decision and judgment herein should have been in favor of said defendant.

Sixth. That the court erred herein in not holding and deciding that the records and proceedings in the Holt case, referred to in the evidence, was final and conclusive against said plaintiff, and was res judicata, and that under said judgment in said Holt case, the said plaintiff was barred and estopped from maintaining this action.

Seventh. That failing to consider and determine that the judgment and decisions of the Federal Courts were final and conclusive and barred and estopped said plaintiff from maintaining this action, constituted a failure of due process of law within the Constitution of the United States.

Eighth. That failing to so consider and determine that the judgment and decisions of the Federal Courts were final and conclusive and barred and estopped said plaintiff from maintaining this action would be and was in violation of Article Four, Section One, of the Federal Constitution, providing that full faith and credit shall be given to the public acts, records and judicial proceedings of every other state.

Ninth. That the failing to so consider and determine that the judgment and decisions of the Federal Courts were final and conclusive and barred and estopped said plaintiff from maintaining this action was and is in violation of Section 905 of the Revised Statutes of the United States, requiring full faith and credit to be given by the courts of one state to the records, public acts, and judicial proceedings of the courts of all other states and of the United States.



Tenth. That the court erred in denying and refusing to sustain the validity of the Supreme Statutes No. 482 of the defendant, providing for an increase of rates, and in so doing denied the authority of the defendant under the Act of Congress creating the defendant to enact such Statute 482.

Eleventh. The court erred in not holding and deciding that under the Charter of said defendant granted by the Congress of the United States, and under the decisions of the United States Court, that such decisions were binding on this court and all others of the State of Nebraska, and that under said Charter and decisions the said plaintiff was barred and estopped from maintaining this action.

Twelfth. That the court erred in receiving evidence regarding attorneys' fees to counsel for plaintiff.

Dated, March 1st, 1922. S. H. Esarey, W. J. Connell, Attorneys for Defendant.

[Endorsement omitted.]

[Title omitted.]

### ORDER OVERRULING MOTION FOR NEW TRIAL.

Now on this 1st day of March, 1922, it being a day of the regular February 1922 term of said court, this cause came on for hearing upon the Motion for a New Trial, filed by the Defendant herein, which motion was argued and submitted to the Court, and the Court upon due consideration thereof, doth overrule said Motion for New Trial, to which the defendant excepts, and is allowed forty days from the rising of the Court in which to prepare and serve Bill of Exceptions.

[Title omitted.]

### CLERK'S CERTIFICATE.

STATE OF NEBRASKA,  
County of Otoe, ss:

I, John C. Miller, Clerk of the District Court of the Second Judicial District of the State of Nebraska, within and for the County of Otoe, do hereby certify that the above and foregoing is a true and correct transcript of the proceedings had and done in this case, wherein George O. Meyer, is Plaintiff, and the Supreme Lodge, Knights of Pythias, is Defendant, and that the following named instruments are true and correct copies of the originals thereof, to wit: Petition, Summons and return, Answer, Reply, Journal entry on amendment to answer, Amended Answer, Reply, Journal entry of Judgment, Motion for New Trial, Journal entry overruling Motion for New Trial, as the same appear on file and of record in my office.

In testimony whereof, I have hereunto set my hand, and affixed the seal of said Court, at Nebraska City, in said County and State, this 22nd day of March, A. D., 1922. [Seal.] John C. Miller, Clerk of the District Court.

[Endorsement omitted.]

47 And on the same day, to wit, March 30, 1922, there was filed in the office of the Clerk of said Supreme Court, a certain Bill of Exceptions, which original Bill of Exceptions, pursuant to the order of said Supreme Court of Nebraska of date December 7, 1922, appears in this transcript immediately following this recitation and is marked Exhibit "A" and identified by my signature on the first page thereof.

48

[Title omitted.]

### DEFENDANT'S BILL OF EXCEPTIONS.

[Filed Mar. 8, 1922.]

Appearances: For Plaintiff, Mr. D. W. Livingston and Mr. Paul Jessen; for Defendant, Mr. W. J. Connell and Mr. Sol. H. Esarey.

[Endorsement omitted.]

49 Received of W. J. Connell, for examination and amendment, a draft of a Bill of Exceptions, (the same comprising Volumes 1 and 2, & 3 each so respectively numbered,) in the case of George O. Meyer, Plaintiff, against the Supreme Lodge, Knights of Pythias, Defendant, tried in the District Court of Otoe County, Nebraska, at the regular September Term, 1921, thereof.

Dated at Nebr. City, Nebraska, this 8th day of March, 1922. D. W. Livingston, Attorney for Plaintiff.

I herewith return the draft of a Bill of Exceptions in the above entitled cause, submitted to me on the 8th day of March, 1922, and propose amendments as follows: None.

Dated at Nebr. City, Nebraska, this 8th day of March, A. D. 1922. D. W. Livingston, Attorney for Plaintiff.

Received the within Bill of Exceptions of this 8th day of March, 1922. W. J. Connell, Attorney for Defendant.

50

[Title omitted.]

Be it remembered, That at the September, A. D. 1921, Term of the Otoe County, Nebraska, District Court, to-wit: on the 6th day of October, 1921, that being one of the days of said term, on the hearing of the above entitled cause of George O. Meyer, Plaintiff, against the Supreme Lodge, Knights of Pythias, Defendant, in the District

Court of Otoe County, in the Second Judicial District of Nebraska the above named plaintiff and the above named defendant, each to maintain the issues of their respective parts, adduced evidence, and all of said evidence, with the objections thereto, the grounds for said objections, the rulings of the Court thereon, and all exceptions to such rulings made and taken at the time, having been by the said Defendant reduced to writing within the time allowed therefor by the Court in this its bill of exceptions, and the same having been served on the attorney for the Plaintiff, for examination and amendment, the said Defendant, now prays the Honorable Judge before whom the said cause was heard that this its Bill of exceptions may be settled, signed, sealed, allowed and made a part of the record of the aforesaid cause in the aforesaid Court.

51

**INDEX OF TESTIMONY.**

Pages.

Stipulation ..... 5 to 12

## Defendant's witnesses:

Mr. W. O. Powers, Direct.....	365 to 375
Cross .....	376 to 377
Re-Direct .....	377 to 382 and
	395 to 398
Re-Cross .....	389 and 399
Mr. Geo. A. Bangs, Direct.....	383 to 389
Cross .....	389 to 395

## Plaintiff's witnesses:

D. W. Livingston, Direct..... 406 to 409

52

**INDEX OF EXHIBITS.***Exhibits Requested in Stipulation Between Plaintiff and Defendant.*

Offered. Found.

#1. Certificate of Membership.....	5	12 to 13
#2. 4th Class Certificate of Membership.....	5	14 to 27
#3. Application for Transfer in Fourth Class...	6	28
#3-A. Certificate of Membership in Endowment Rank .....	6	29 to 30
#4. Application for change of Beneficiary.....	6	30 to 32
#5. Letter .....	8	32
#6. Act of Incorporation passed by U. S. Congress	9	33 to 34
#7. Holt Case .....	11	34 to 304
#8. Decision of Circuit Court of Appeals in Holt Case .....	11	305 to 309

*Exhibits Requested by Plaintiff, as per Stipulation.*

- #9. Articles from Supreme Constitution and By-Laws. . . 310 to 322  
 #10. Sections from Supreme Statutes, Division VIII. . . 323 to 355  
 #12. Table of Monthly payments effective during the  
       year 1910 . . . . . 364

*Exhibits Requested by Defendant, as per Stipulation.*

- #11. Sections from Supreme Statutes. . . . . 358 to 363

53

Thursday, October 6, 1921.

Mr. Connell: It is hereby stipulated and agreed by and between the parties to this action, in open Court, that the jury shall be and hereby is waived, said parties each reserving the right of objection or exception to the final decision that may be rendered, with the right to appeal or take proceedings in error.

**STIPULATION.**

Mr. Livingston: It is stipulated and agreed by the parties to this action that the same may be submitted to the Court upon the pleadings filed herein and the following stipulation of fact; either party reserving the right to supplement this stipulation by evidence in open Court.

It is stipulated and agreed that the defendant is a fraternal order or organization, maintaining a life insurance department for its members, existing under an act of the United States Congress in the District of Columbia, having its principal place of business in the City of Indianapolis and State of Indiana, and authorized to transact business in the State of Nebraska during the period covered by the pleadings in this case; that on and prior to June 11, 1885, Louis J. Meyer, a resident of Otoe County, Nebraska, was a member of the subordinate lodge of the defendant, holding a certificate of insurance which is submitted with this stipulation as Exhibit "1," dated June 11, 1885, which certificate he surrendered on June 27, 1910, for a change of beneficiary, and on June 30, 1910, the certificate sued upon in this action was issued, Exhibit #2, being membership certificate No. 4651, which is also attached to and made a part of

54 this stipulation, same being for the amount of \$2,000.00, as alleged in plaintiff's petition, said certificate being issued upon the application of the assured for change of beneficiary, which application is attached hereto and made a part hereof and marked Exhibit #4; That Certificate, Exhibit #1, was issued in pursuance to an application by the assured, dated May 7, 1885, copy of which is attached hereto and made a part hereof, marked Exhibit #3, which certificate was issued upon said application upon the surrender of a certificate issued by said defendant on March 12, 1878, a copy of which certificate is attached hereto and made a part hereof, and

marked Exhibit 3-A, which certificate was issued upon the applicant's application of February 27, 1878; that the plaintiff, George O. Meyer, is the beneficiary named in the certificate sued upon in this action; that all dues, premiums and charges required by the defendant to be paid on the part of said Louis J. Meyer, up to January 1, 1911, were duly paid, received and retained by the defendant herein, and all requirements of the said defendant herein, and all requirements of the said defendant on his part to be performed were, up to said date, fully performed to its satisfaction, and that the said Louis J. Meyer was on said date in good standing in said defendant order.

It is further stipulated and agreed that from and including January, 1911, to the date of the death of said deceased, he paid to the Local Section Secretary E. D. McCallum, all dues, assessments and charges promptly at the same rate that he was paying during 1910, which payments were the legal payments and sufficient in amount during the year 1910, and which payments were remitted by the said local section or lodge secretary to the proper officer of the defendant

55 at Indianapolis, Indiana; That with the exception of the payments for the months of January, February, March and April, 1911, they were returned by the defendant to the Secretary of said local section or lodge, with directions that they be returned to the said Louis J. Meyer from month to month as received; that as to the payment by the deceased of dues for the months of January, February, March and April of 1911, receipts were issued by the defendant upon receipt of the different remittances, and that each of said remittances were returned to the Secretary of said local lodge or section within thirty days after the receipt of the same by the defendant and as soon thereafter as the necessary bookkeeping steps were taken to ascertain the claimed insufficiency of the amounts, of which said Louis J. Meyer had notice by written communication, duly mailed to him and received by him, under date of May 18, 1911, of which a copy is hereto attached, marked Exhibit #5; and thereafter, to-wit: on the former trial of this Meyer case, offer was duly made in open court to return to the plaintiff in this case, or to his counsel, or to any representative of the Estate of Louis J. Meyer, or his administrator, the funds to which reference has been made, with interest thereon down to the present time, or to deposit same with the clerk of this Court, or make any other deposit such as the Court may order, the funds not being claimed by the defendant but being held merely for the purpose of being returned, which tender is now renewed by the defendant.

It is further stipulated and agreed that the four monthly payments of January, February, March and April, 1911, received by the defendant, were returned by draft to said Local Section or Lodge Secretary, who returned them to the defendant, who in turn returned them to the Section Secretary with directions to return said money to the assured, who again returned the same to the defendant; that said funds, in accordance with the notice, Exhibit 5, to the assured, were held by the defendant unapplied as

funds belonging to the assured and are still so held, which are the funds now tendered, which present tender is now refused by the plaintiff in open Court; That the refusal to accept said tender on the part of the assured by the defendant in each instance was upon the ground as claimed by the defendant as being insufficient in amount; that the defendant's records show that by reason of the claimed insufficiency of the amount tendered for the month of January, 1911, the certificate of the assured stood forfeited and continued to remain forfeited thereafter.

It is further stipulated and agreed that the said Louis J. Meyer died at Nebraska City, Otoe County, Nebraska, a resident thereof, on April 11, 1916, notice of which death was given the defendant, he being in good standing in his local lodge and having been a citizen and resident of Otoe County, Nebraska from the date of his membership certificate to the date of his death continuously, and the plaintiff, George O. Meyer, is a resident and citizen of Otoe County, Nebraska.

It is further stipulated and agreed that at the time of the application of the assured for a certificate in 1885, the Supreme Lodge, Knights of Pythias, was a corporation organized and doing business under the laws of the United States for the District of Columbia; that the Articles of Incorporation of said Supreme Lodge, Knights of Pythias, were filed with the proper authorities of said District on August 5, 1870; that said corporation continued in existence until the expiration of its charter in 1890; after which time for a period of four years it continued its business as theretofore only as a de facto corporation; that in 1894 the Supreme Lodge, Knights of Pythias appointed a committee out of its members to prepare and procure a charter from the Government of the United States, which Committee procured the passage of the Act of Congress, June 29, 1894, granting to said Supreme Lodge, Knights of Pythias, a charter under which it now exists and under which it has existed at all times since June 29, 1894, which Act of Congress appears in 28th United States Statutes at Large, Page- 96 and 97, a copy of which is hereto attached to this stipulation and made a part thereof, marked Exhibit #6; That immediately thereafter said committee so appointed by the Supreme Lodge, Knights of Pythias, reported back to said Supreme Lodge the enactment of said Statute and said Supreme Lodge, by appropriate resolution, accepted the benefits of said Statute; that the Supreme Lodge, Knights of Pythias has accepted and received all assets and assumed all the liabilities of the corporation of which the plaintiff's decedent became a member by his application and certificate hereinbefore introduced in evidence.

It is further hereby stipulated and agreed that the Supreme Constitution and Statutes of the Knights of Pythias, adopted by the Supreme Lodge at the convention of 1906, with amendments adopted at the conventions of 1908, 1910, 1912, 1914 and 1916 be admitted in evidence with the understanding and agreement that upon the making of the bill of exceptions in said cause, either party may select and designate to the reporter the certain parts thereof which he or it desires to be included in the record, and such

parts of said Constitution and Statutes shall be considered as evidence in this case the same as though they were formally offered and identified in this stipulation. It is further understood that in making up the Bill of Exceptions, only such parts of said Supreme Constitution and Statutes as are designated by the parties shall be included and in the event that both parties designate the same sections or parts the said sections or parts shall appear but once in the Bill of Exceptions.

It is further hereby stipulated and agreed that the Supreme Lodge of 1910, in its session at Milwaukee, Wisconsin, was composed of 163 members and that of such members, nine were Past Supreme Chancellors and eight were Supreme Officers of the defendant; 98 were holders of certificates in the Insurance Department and 146 were delegates elected by the various Grand Lodges within the order, all of whom participated in the enactment of the Statutes passed at said session, increasing the rates purporting to be effective January 1, 1911, and each of whom had and exercised his vote; that the Supreme Lodge of the defendant during the period covered by the pleadings in this case was constituted in accordance with the Supreme Constitution as it existed in 1910 and that all the legislation and Statutes were enacted in substantially the same manner.

59 That with the exception of the laws and statutes enacted by the Supreme Lodge in 1910, there is no question or issue as to the validity of the laws contained in the Supreme Constitution and Statutes of the Knights of Pythias; that the legislation of 1910, increasing the rates, proved to be a grievance to many of the members of the insurance department; That to test the validity of this legislation, Joseph Holt and nineteen others, members of the Insurance Department and holders of Certificates in Class 4 of said department, on behalf of themselves and all other persons similarly situated and being residents of the State of Louisiana brought their Bill of Complaint in the United States District Court for the District of Indiana, against the defendant herein, and such proceedings were had and decision of the Court as is shown by Exhibit #7 attached hereto and made a part hereof, which exhibit is a copy of the said entire proceedings, as a correct record, subject to the objections of the plaintiff as to materiality or relevancy.

It is further stipulated that the complainants in said bill prayed an appeal from the judgment of the District Court of the United States for the District of Indiana to the United States Circuit Court of Appeals for the Seventh Circuit and that said complainants proved their appeal and the same was argued both by briefs and orally in said Circuit Court of Appeals, after which, on July 18, 1916, said Circuit Court of Appeals rendered its decision in said case, a copy of which decision is filed herewith and made a part hereof and marked Exhibit 8, subject to plaintiffs' objections as to  
60 materiality and relevancy.

It is further stipulated that said plaintiff, Holt, et al., prayed an appeal from the judgment of the said Circuit Court of Appeals to the Supreme Court of the United States, which appeal was granted, and that on the 21st day of October, 1918, see 248



U. S. 588, 39 Supreme Court Rep. 5, 63 L. ed. 434, said plaintiffs dismissed their said appeal.

### COPY OF EXHIBIT "1" AS PER STIPULATION.

No. 4651. Fourth Class, \$2,000.

#### *Certificate of Membership, Endowment Rank of the Order of Knights of Pythias.*

This certifies, That Brother Louis J. Meyer received the Endowment Rank of the Order of Knights of Pythias in Section No. 106 on February 28<sup>th</sup> 1878, and is a member in good standing in said Rank. And in consideration of the representations and declarations made in his Application bearing date of February 27<sup>th</sup>, 1878, and his absolute surrender of the Certificate heretofore held by him in Second Class for cancellation, as requested in his application for transfer to the Fourth Class, bearing date of May 7<sup>th</sup> 1885, all of which is made a part of this contract, and the payment of the prescribed Admission Fees, and in consideration of the payment hereafter to said Endowment Rank of all monthly payments as required and the full compliance with all the laws governing this Rank, now in force or that may hereafter be enacted, and shall be in good standing under said laws, the sum of two thousand dollars will be paid by the Supreme Lodge Knights of Pythias of the World, to his wife Barbara Meyer, as directed by said Brother in his Application or to such other person or persons as he may subsequently direct, by change of Beneficiary entered upon the records of the Supreme Secretary of the Endowment Rank; upon due notice and proof of death, and good standing in the Rank at the time of death, and surrender of this certificate.

61

Provided, however, that if, at the time of the death of said Brother, one monthly payment to the Endowment Fund by members holding an equal amount of Endowment, shall not be sufficient to pay the amount of Endowment held by said Brother, the benefit to be paid in case of death shall be a sum equal to one payment to the Endowment Fund by each member holding an equal amount of Endowment. And it is understood and agreed, that any violation of the within mentioned conditions, or the requirements of the laws in force governing this Rank, shall render this Certificate and all claims null and void, and that the said Supreme Lodge shall not be liable for the above sum, or any part thereof.

In witness whereof, We have hereunto subscribed our names and affixed the seal of the Supreme Lodge Knights of Pythias of the World. Jno. Van. Valkenburg, Supreme Chancellor.

Attest: (Seal.) R. E. Cowan, Supreme Keeper of Records and Seal.

Issued this 11 day of June, 1885, P. P. XXII, at Washington, District of Columbia, and registered in Book 1, Folio 94. Halver Nelson, Supreme Secretary.



Received of ———, Supreme Secretary of the Endowment Rank of the order of Knights of Pythias the sum of — Dollars (\$—) payment in full of this Certificate. ———.

Attest: ———, Secretary Section No. —.

Warrant No. —. Class §—. Certificate No. —. Amount of —. For additional papers see Voucher No. —. Received June 27, 1910. Insurance Dept. K. of P. ———, Mail Clerk.

## 62 COPY OF EXHIBIT No. 2 AS PER STIPULATION.

F. C. B.

Fourth Class.

F. C. B.

### *Certificate of Membership.*

No. 4651.

Change of Beneficiary.

\$2,000.

The Supreme Lodge (K. P.), Knights of Pythias.

### Insurance Department.

This Certifies That in consideration of the warranties, promises and agreements made in his application, Louis J. Meyer, has been accepted as a member of The Fourth Class of the Insurance Department, and, relying upon said warranties, promises and agreements.

The Supreme Lodge Knights of Pythias promises to pay, at the head office of its Board of Control, unto George O. Meyer, his son, beneficiary of said member, subject to his right to change the beneficiary as hereinafter provided, the sum of Two Thousand Dollars upon the receipt and approval of satisfactory proofs of the fact and cause of the death of the said member while this Certificate is in full force, the amount of any indebtedness on account of this Certificate being first deducted therefrom, and upon the surrender of this Certificate, Subject however, to the following conditions which are expressly assented to by the member:

1. The contract evidenced hereby shall not begin until twelve o'clock noon of the day and date hereof and then the Supreme Lodge Knights of Pythias, hereinafter called the Society, will not be liable unless the said member has actually paid the membership fee and made the first monthly payment required while said member is in good health.

2. The charter, all the laws, rules and regulations of the Society governing the Insurance Department now in force and as the same may be hereafter changed, altered, added to, amended and repealed, together with the said application contained in Parts One and Two, and any subsequently made applications that may be accepted respecting this Certificate, and this Certificate consisting of pages 1, 2, 3 and 4 shall compose the contract between the member and the Society. A true copy of said parts One and Two of said application are contained on pages 2, 3 and 4 thereof.

63 3. The Supreme Lodge Knights of Pythias is incorporated, and is a Fraternal Beneficiary Society, and no officer or repre-

sentative thereof or of any subordinate body thereof, has any right or power by any statement, agreement, promise or manner of transacting business, to waive the provisions or requirements of the contract between the member and the Society, or of the laws, rules and regulations of the Society.

4. The member shall not have any divisible interest in any of the funds and properties of the Society, nor any lawful claim during his lifetime to any part thereof, nor the right to have any portion thereof applied to the maintenance of this Certificate.

5. This Benefit Certificate is issued and accepted by the parties in interest subject to all the provisions and conditions contained and referred to in the foregoing, and subject further, to the conditions, provisions and benefits contained on the 2nd, 3rd and 4th pages hereof, which are hereby made a part of this certificate, and all the conditions and provisions of the contract between the member and the Society are conditions precedent to any liability of the Society hereunder and are to be deemed to be assented to and accepted without the necessity for the member's signature being affixed hereto.

In testimony whereof, witness, the signature of the President and General Secretary, respectively of the Insurance Department, and the seal thereof affixed at Chicago, Illinois, U. S. A., this 30th day of June, One Thousand, Nine Hundred and ten. Union B. Hunt, President. W. A. Jenkins, General Secretary. (Seal.)

## 2.

### Conditions, Provisions, and Benefits.

#### Monthly Payments and Occupation.

1st. The monthly payments required of the member under this contract are based upon his age at his nearest birthday to the date of his application, which is given as age 51, and his present occupation, warranted by him to be —.

64 Each monthly payment required hereunder therefore is \$5.00, of which 4.84 will belong to the Mortuary Fund of the 4th Class, and \$.86 will belong to the Expense Fund of the Insurance Department. Said monthly payments will be due and payable to the Secretary of the Section to which the member belongs, without notice, in advance, on the first day of each and every month. Failure to make any such payment on or before the twentieth day of the month for which the same is due, shall, ipso facto, from and after such date, forfeit this Certificate.

A member changing his occupation from that stated in this paragraph will be required to conform strictly to the laws and rules of the Society respecting same.

#### Assignment.

2nd. This Certificate cannot be assigned without the consent of the Board of Control, and then only in accordance with the laws of the Society.

### Change of Beneficiary.

3rd. The beneficiary or beneficiaries named in this Certificate have no vested interest in same, and the Beneficiary or Beneficiaries may be changed at any time, and as often as the member may desire, upon the laws respecting the changing of beneficiaries being complied with. If there is a failure of designation of beneficiary hereunder the rule for such cases stated in the laws of the Society shall govern.

### Cancellation of Certificates.

4th. The Board of Control may annul any Certificate held by a member which has been procured by misrepresentation or fraud, or whenever a member becomes addicted to habits or vices whereby his natural or life expectancy is or may be thereby shortened, or whenever it is discovered by the Board that a member has by some habit or vice already shortened his expectancy. But the Board's failure to act hereunder in any case shall not preclude or estop the Society from asserting any defense that it might have in the absence of this clause.

65

### Reinstatement.

5th. Upon this Certificate becoming forfeited by reason of the member failing to make any payment required within the time required, the same may be reinstated as is provided therefor by the laws of the Society.

### Benefit Exempt from Debt.

6th. The Benefit provided to be paid hereunder will not be liable for, nor be subject to be appropriated to, the payment of any debts against the estate of the member.

Death by Suicide, Use of Intoxicating Liquors, Narcotics, Opiates, in a Duel, at the Hands of Justice, or in Violation of Criminal law.

7th. If the death of the member holding this certificate results from suicide, either voluntary or involuntary, whether the member be sane or insane at the time, or if his death be caused or superinduced by the use of intoxicating liquors, narcotics, or opiates, or in consequence of a duel, or at the hands of justice, or in violation or attempted violation of any criminal law, then the amount to be paid on this Certificate shall be a sum only in proportion to the whole amount thereof, as the member's matured life expectancy is to his entire expectancy at the date of this Certificate, the expectation of life based upon the American Experience Table of Mortality to govern.

### Copies of Laws.

8th. A true copy of the several charters of the Society and of the laws of the Society governing this Certificate in force at the time is delivered to the member coincident with the delivery to him of this Certificate, and the same is attached to this Certificate. Additional copies will be furnished upon request. Copies of amendments and changes when made will be mailed to the member at his last known mail address on the books of the Society, and are to be by him attached hereto.

### Mailing Address.

9th. The member's mail address is as given in his application for this Certificate. No change of Address will be valid so far as this Certificate is concerned, until notice of such change has been received at the head of office of the Board of Control.

### 66 Regular and Extra Monthly Payments, Right of Readjustment, and Increase of Contribution.

10th. The member holding this Certificate shall make all monthly payments as they may be due from him, and also make any extra or special monthly payments, required from him hereunder as called by the Board of Control. His rate of contribution hereunder may be changed, increased or adjusted at any time in accordance with the laws of this Society when deemed necessary to carry out the purposes of the Insurance Department. The provision of this paragraph shall also apply to any paid up certificate that may be issued by reason of this Certificate, and also to this Certificate if it is commuted into extended insurance contract.

### Proofs of Death and Limitation.

11th. Proofs of death satisfactory to the Board of Control shall be furnished to it free of expense within one year from the date of death of the member and no action at law shall be maintained unless suit is commenced within two years from the death of the member.

(Copy of)

*Part One of Application for Membership in the Insurance Department of the Supreme Lodge, Knights of Pythias.*

To the Board of Control:

The undersigned makes the following Part One of Application for membership in the fourth class of the Insurance Department of the Supreme Lodge Knights of Pythias.

For the purpose of securing the approval of Parts One and Two, constituting my said application, and my acceptance as a member of said Class, the statements contained herein and below are made, and the answers to the questions are given, the truth of all of which I warrant:

67

## Statements.

1. My name is ———.
2. My residence is in ———, County of ———, State of ———.
3. My Post Office Address is ———.
4. My present occupation or employment is ———.
5. My occupation or employment for the last five years has been ———.
6. I was born on the — day of ———, A. D. 18—, in ———, County of ———, State of ———, and my age at nearest birthday to this date is — years.
7. I am a member, in good standing, of the Knight Rank of ——— Lodge, No. —, Knights of Pythias of the Grand Domain of ———, and all dues and other charges against me in said Lodge are paid to the — day of ———, A. D. 19—.
8. I desire admission to Section No. — of the Insurance Department.
9. I desire that a certificate or certificates be issued to me in the Fourth Class, payable as herein designated, viz:
  - A. \$—, payable to ———, who is related to me as ———.
  - B. \$—, payable to ———, who is related to me as ———.
  - C. \$—, payable to ———, who is related to me as ———.
  - D. \$—, payable to ———, who is related to me as ———.

## Copy.

*Application for Change of Beneficiary in the Insurance Department of the Supreme Lodge, Knights of Pythias.*

To the Board of Control:

The undersigned makes application for change of beneficiary, in accordance with the provisions of Sec. 490, Supreme Statutes, Insurance Department Laws, Sec. 31, Chap. 6 and Sec. No. 492, Supreme Statutes Insurance Department Laws, Sec. 33, Chap. 6 and for that purpose respectfully submits the following:

68 Benefit Certificate in the 4th Class, Plan —, Insurance Department, No. 4651 was issued on the 11th day of June, A. D. 1885 to the undersigned, which certificate is hereby surrendered for cancellation or certificates in lieu thereof in accordance with this application. The warranties, statements and agreements binding upon the undersigned under said surrendered certificate, except in so far as they are modified by this application or the laws now in force governing the Insurance Department, are to be considered as here repeated; and enter into and become a part of the

contract to be evidenced by the certificate or certificates hereby applied for when issued.

I direct that a certificate or certificates be issued to me in the class and upon the plans as hereinafter designated to-wit:

1. In 4th Class on Plan (State what plan by name) —, for (State amt. on this plan) \$2,000, payable to (Write plainly first and last name of beneficiary) George O. Meyer, who is related to me as (State kinship) son.

2. In — Class, on Plan (State what plan by name) —, for (State amt. on plan) —, payable to (Write plainly first and last name of beneficiary) — —, who is related to me as (State kinship) —.

3. In — Class, on Plan (State what plan by name) —, for (State amt. on plan) —, payable to (Write plainly first and last name of beneficiary) — —, who is related to me as (State kinship) —.

4. In — Class, on Plan (State what plan by name) —, for (State amt. on plan) —, payable to (Write plainly first and last name of beneficiary) — —, who is related to me as (State kinship) —.

I warrant the truth of the statements with reference to kinship of the proposed beneficiary or beneficiaries.

Witness my hand and seal this 31st day of May, A. D. 1910.  
(Signed) Louis J. Meyer. [Seal.] Member must sign in person and with first name in full.

Witness: D. W. Livingston.

I certify to the identity of the member signing the above. E. D. McCallum, Secretary of Section 106.

69 NOTE.—Change of beneficiary can be made only in accordance with the provisions of the Supreme Statutes referred to, and no change will be valid until application therefor upon this form is accepted by the Board of Control.

When signature of Section Secretary cannot be obtained, the member must acknowledge signature before an officer authorized to take acknowledgements, who will officially certify to his character and the date of expiration of his term of office.

If the new certificate or certificates applied for are to be issued in the Fourth Class, all record to the "Plan" may be eliminated by drawing pen through proper blank.

### 3.

### Questions and Answers.

1. Do you now hold a certificate in the Insurance Department? —. If you answer "Yes," then answer the following questions, viz.: A. What is the certificate number? —. B. In what Class was it issued? —. What Plan? —.

2. Have you ever received a Certificate in the Insurance Department which has been lapsed or forfeited? \_\_\_\_\_. If you answer "Yes," then answer the following questions: A. What is the Certificate number? \_\_\_\_\_. B. In what class was it issued? \_\_\_\_\_. What Plan? \_\_\_\_\_.

3. Is your life now insured in any Society or Company? \_\_\_\_\_. If you answer "Yes," then give the names of the societies and companies and the amount in each, and date of contract in each. \_\_\_\_\_.

4. Have you ever applied to any Society or Company, or to any agent or representative of a Society or Company, for insurance, without a certificate or policy of the exact kind and amount applied for being issued? \_\_\_\_\_. If so, state names of Societies, Companies or Representatives, dates, causes, and full particulars. \_\_\_\_\_.

5. Have you paid the membership fee and first monthly payment required for the amount of insurance applied for? \_\_\_\_\_. If so, to whom? \_\_\_\_\_. *If so, to whom?*

I do hereby declare and agree that all the foregoing statements, questions and answers, whether written by my own hand or not, are material to the risk proposed by this application, and that all the said statements and answers are hereby warranted to be true.

I understand and do agree that the Supreme Lodge Knights of Pythias is a fraternal beneficiary society, that said Insurance Department thereof is formed and carried on for the sole benefit of its members and their beneficiaries and not for profit.

I further understand and agree that if my said application for membership is accepted, constituting Parts One and Two thereof, that the said application, the Benefit Certificate or Certificates that may be issued thereon, the Charter, the Constitution and Statutes of the said Supreme Lodge now in force with any and all amendments thereto hereafter enacted by the said Supreme Lodge, and all the rules and regulations of the Board of Control of said Insurance Department as the same now exist or may from time to time be adopted, shall constitute the Contract of Insurance between the undersigned and said Supreme Lodge, and I further agree that, as a member of said Insurance Department, if accepted, I will be governed and conform to, and my obligations and rights and those of my beneficiaries shall be governed and controlled by the said contracts. To all of which I willingly and freely subscribe.

Dated at (Actual date of signature of applicant) \_\_\_\_ this \_\_\_\_ day of \_\_\_\_, A. D. 19\_\_\_. (Applicant must sign in person with first name in full.) \_\_\_\_\_, Applicant. (Seal.)

Witness: (Give official title) \_\_\_\_\_.

## **PART TWO OF APPLICATION FOR MEMBERSHIP IN THE INSURANCE DEPARTMENT OF THE SUPREME LODGE, KNIGHTS OF PYTHIAS.**

to the Board of Control:

The undersigned makes the following Part Two of Application for Membership in the Fourth Class of the Insurance Department of the Supreme Lodge Knights of Pythias.



For the purpose of securing the approval of Parts One and Two, constituting my said application, and my acceptance as a member of said Class, the statements contained herein and below, and the answers to the questions given below are warranted to be true.

### Questions and Answers.

1. Name of applicant, ———. Address, ———.
2. A. Are you now in good health? —.
- A. When were you last successfully vaccinated? ———.
3. —. Have you consulted a physician during the last five years?  
——.
- B. When and for what diseases? (Give other particulars under 6B. ———.
- C. Give name and residence of such physician. ———.
- D. Give the name and residence of your medical advisers or family physician, to whom you now refer for a certificate, if deemed necessary. ———.
- E. Has any physician given an unfavorable opinion of your physical condition with reference to life insurance? ———.
- F. Have you ever been advised by a physician to try a change of climate to benefit your health? ———.
4. State, as far as you know, the following particulars in regard to your grand-parents, parents, brothers and sisters:

### Family Record of the Applicant.

	If living.		If dead.			
	Age.	Health.	Age.	Cause of death.	How long sick.	Previous health.
Father .....	....	....	....	....	....	....
Father's Father.....	....	....	....	....	....	....
Father's mother.....	....	....	....	....	....	....
72 Mother .....	....	....	....	....	....	....
Mother's Mother.....	....	....	....	....	....	....
Mother's father.....	....	....	....	....	....	....
Brothers or half brothers.....	....	....	....	....	....	....
Living .....	....	....	....	....	....	....
Dead .....	....	....	....	....	....	....
Sisters or half sisters.....	....	....	....	....	....	....
Living .....	....	....	....	....	....	....
Dead .....	....	....	....	....	....	....

5. A. Have any of your grand-parents, uncles, aunts, parents, brothers or sisters been afflicted with consumption? ———. Raising of blood? ———. Rheumatism? ———. Insanity? ———. Consumption with pulmonary, scrofulous, tuberculous, cancerous or any hereditary disease? If so give particulars. ———.

B. Has there been, within the last three years among the members of your household, a case of consumption? ———.

C. State if any member of your household is now afflicted with consumption. ———.



6. A. Have you ever had (Answer "Yes" or "No" to each):

Insanity? \_\_\_\_\_. Asthma? \_\_\_\_\_. Jaundice? \_\_\_\_\_.  
 Apoplexy? \_\_\_\_\_. Bronchitis? \_\_\_\_\_. Chronic Di-  
 arrhœa? \_\_\_\_\_.  
 Paralysis? \_\_\_\_\_. Pneumonia? \_\_\_\_\_. Fistula? \_\_\_\_\_.  
 Dizziness? \_\_\_\_\_. Pleurisy? \_\_\_\_\_. Piles? \_\_\_\_\_.  
 Epilepsy or fits? \_\_\_\_\_. Expectoration? \_\_\_\_\_. Gall  
 stones or gravel? \_\_\_\_\_.  
 Convulsions? \_\_\_\_\_. Consumption? \_\_\_\_\_. Colic?  
 \_\_\_\_\_.  
 Delirium Tremens? \_\_\_\_\_. Spitting of Blood? \_\_\_\_\_.  
 Dropsy? \_\_\_\_\_.  
 Sunstroke? \_\_\_\_\_. Habitual Cough? \_\_\_\_\_. Syphilis?  
 \_\_\_\_\_.  
 Inflam-ation? \_\_\_\_\_. Shortness of Breath? \_\_\_\_\_.  
 Stricture? \_\_\_\_\_.  
 Cancer? \_\_\_\_\_. Tumor? \_\_\_\_\_. Scrofula? \_\_\_\_\_.  
 Discharge from Ear? \_\_\_\_\_. Ulcer? \_\_\_\_\_.  
 Open sores? \_\_\_\_\_. Chronic Rheumatism? \_\_\_\_\_.  
 Gout? \_\_\_\_\_.  
 Varicose veins? \_\_\_\_\_.

(Continued on lower half of page 4.)

4.

(Continued from page 3.)

B. If any of the foregoing questions are answered "Yes" explain fully in following form:

Disease or injury.	Date.	Duration.	Was recovery complete?	Name and address of medical attendant.
....	....	....	....	....

C. Have you ever had an attack of appendicitis? \_\_\_\_\_. How many? \_\_\_\_\_. When was the last attack? \_\_\_\_\_. Were you operated upon? \_\_\_\_\_.

D. Did you ever have syphilis? \_\_\_\_\_. How long ago? \_\_\_\_\_. How long did you take treatment for same? \_\_\_\_\_.

E. Have you any scar or special mark of identification? \_\_\_\_\_. If so, describe. \_\_\_\_\_.

7. A. Have you ever had inflammatory or acute articular rheumatism? \_\_\_\_\_. If so, give particulars as to number of attacks, duration, dates, severity, &c. \_\_\_\_\_. Was it accompanied with shortness of breath or cough? \_\_\_\_\_.

B. Have you had any illness or injury other than as stated by you in question 6, or undergone any surgical operation? \_\_\_\_\_. If so, state particulars:

Disease or injury.	Date.	Duration.	Was recovery complete?	Name and address of medical attendant.
-----------------------	-------	-----------	---------------------------	---

- .....
8. A. Have you hernia, or have you ever been ruptured? —  
 B. Dit it ever become strangulated? —. When last? —  
 C. Do you wear a suitable truss? —.  
 D. Do you agree to wear a truss while insured, if ever ruptured?

9. A. Have you ever used opium, morphia, chloral or any narcotic, or taken treatment for any of these habits or treatment for liquor or drug habit? If so, explain fully. —.

B. Have you ever attempted suicide? —.

C. Do you smoke cigarettes? —. If so, to what extent? —.

D. Do you use tobacco? —. If so, in what form and to what extent? —.

10. A. Have you ever used spirituous, vinous or malt liquors to excess? —. (If "Yes" give full information.) —.

B. State the quantity you use each day of malt liquors. —. Wines. —. Spirituous liquors. —.

C. Are you engaged in any way in the sale or manufacture of spirituous, vinous or malt liquors? —.

11. A. What is your height? — ft., — in.

B. Weight? — lbs.

C. Has your weight recently increased? —. Or diminished? —. If so, to what extent and from what cause? —.

74 I do hereby declare and agree that all the foregoing questions and answers, whether written by my own hand or not, are material to the risk proposed by this application, and said answers are warranted to be true.

I do further declare and agree that as a condition precedent to said Supreme Lodge being holden for any liability hereunder I will faithfully keep the said agreement above mentioned with reference to wearing a truss if ruptured.

I do further declare and agree for myself, my heirs, representatives and beneficiaries, that I do hereby waive any and all provisions of law of any state or country now or hereafter in force prohibiting or excusing any physician heretofore or hereafter attending me or any of my relatives, professionally otherwise, from disclosing or testifying to any information or knowledge acquired thereby, or making such physician incompetent as a witness; and I hereby consent and request that any such physician testify to and disclose any information so derived or received in any suit or proceeding at law, or in equity in which the benefit applied for may be involved, or in any trial or investigation within the tribunals of this society, involving my membership in said society or the contract therein; and I further agree on behalf of my heirs, representatives and beneficiaries that as a condition precedent to such heirs, representatives or beneficiaries prosecuting any such suit or investigation involving my membership or contract in said society or the said Supreme Lodge, being

holden for any liability hereunder, shall if called upon, in writing, by an attorney, solicitor or proper officer of such society in such suit or proceeding enter into, execute, make and deliver any waiver that may be required or permitted under the laws of any State or country, in order that such physician may be permitted to testify, and in order that this provision may be enforced at the option of said society.

To all of which I willingly and freely subscribe.

Dated at (Actual date of signature of Applicant) ———  
this — day of ———, A. D. 19—. ———, Applicant. (Seal.)

Witness by Dr. ———, Address, ———.

(End of Part Two.)

(Endorsed on back:) Received of the Board of Control of the Insurance Department of the Supreme Lodge Knights of Pythias the sum of — Dollars (\$—) this day paid and accepted as payment and settlement in full of all claims and demands of every kind and nature under and by virtue of this certificate, which is hereby satisfied and surrendered for cancellation. Dated at ——— this — day of ———, A. D. 19—. ———, Beneficiaries. Witness: ———, Secretary of Section No. —. [Seal.] Certificate of Membership No. 4651, Name L. J. Meyer. Address Nebraska City, Neb. Section No. 106 Mo. Payments, \$5.70. The Supreme Lodge Knights of Pythias Insurance Department. \$2,000. Issued by D. Entered by ———. Rated by D. Rated age, 51.

# **COPY OF EXHIBIT No. 3 AS PER STIPULATION.**

*Application for Transfer in Fourth Class.*

Nebraska City, May 7, 1885.

To Halvor Nelson, Sup. Sec'y of the Endowment Rank, K. of P.:

The undersigned, born on the 24 day of August, 1834, a member in good standing of Section No. 106, Endowment Rank, K. of P., and holding Certificate No. 2095 in 2nd Class, which is hereto attached, hereby make application to enter the Fourth Class, in which I desire to hold an Endowment of 2,000 *Thousand* Dollars, and I hereby surrender all my right, title and interest in and to the within Certificate, the benefit upon my death to be paid as follows: My wife. (Signed) Louis J. Meyer, Applicant.

I hereby certify that Bro. Louis Meyer is a member in good standing of Sec. No. 106 E. R. K. of P., and of Ewart Lodge No. 7, located at Nebraska City, State of Nebraska. (Signed) Paul Schminke, Secretary. (Seal.)

Please Observe Instructions on Back of this Blank.

This blank must be filled out accurately and completely, (one for each Certificate surrendered,) and must be attached to the same.

In all cases where such terms as "To myself," "To my heirs," "To

my legal representatives," "As directed by will," or any other vague terms have been used; or if beneficiaries, other than the present ones now in force, are named, some person or persons related to or dependent upon the applicant must be substituted, and a request to change of beneficiary in regular form must accompany this application for transfer.

Members transferring to the Fourth Class must pay all assessments in the Class or Classes they surrender, of which notice has been issued from this office.

No application for transfer will be entered by the Supreme Secretary until these provisions have been complied with.

## 77 COPY OF EXHIBIT No. 3-A AS PER STIPULATION.

### *Certificate of Membership.*

No. 2095.

Second Class, \$2,000.

Endowment Rank of the Order of Knights of Pythias.

This certifies, That Brother Louis J. Meyer, has received the Endowment Rank of the Order of Knights of Pythias in Section No. 106 and is a member in good standing in said Rank. And in consideration of the representations and declarations made in his Application bearing date of February 27<sup>th</sup> 1878, which Application is made a part of this contract, and the payment of the prescribed Admission Fee; and in consideration of the payment hereafter to said Endowment Rank of all Assessments as required, and the full compliance with all the Laws governing this Rank, now in force, or that may hereafter be enacted, and shall be in good standing under said Laws, the sum of Two Thousand Dollars, will be paid by the Supreme Lodge Knights of Pythias of the World, to such person or persons as the said Brother may direct in his Application, or as shall be made by him subsequently, by will, or otherwise, and entered upon the Records of the Supreme Master of Exchequer, upon due notice and proof of death, and good standing in the Rank at time of death, and the surrender of this Certificate.

Provided, however, that if at the time of the death of the said Brother, Louis J. Meyer, there shall be less than Two Thousand Members in this Class, there shall only be paid a sum equal to One Dollar for each member in good standing in this Class. And it is understood and agreed, that any violation of the within mentioned conditions, or the requirements of the laws in force governing this Rank, shall render this Certificate, and all claims, null and void and that the said Supreme Lodge shall not be liable for the above sum, or any part thereof.

78 In witness whereof. We have hereunto subscribed our names and affixed the Seal of the Supreme Lodge Knights of Pythias of the World. S. S. Davis, Supreme Chancellor. Attest Joseph Dowdall, Supreme Keeper of Records and Seal. (Seal.)

Issued this Twelfth day of March, 1878, P. P. X. V. at Indianapolis, Indiana, and Registered in Book 1, Folio 52. (Signed) John B. Shumph, Supreme Master of Exchequer.

### **COPY OF EXHIBIT No. 4 AS PER STIPULATION.**

Form 12-10M-12-06.

(Received June 27, 1910, Insurance Dept., K. of P., Mail Clerk.)

*Application for Change of Beneficiary in the Insurance Department of the Supreme Lodge Knights of Pythias.*

To the Board of Control:

The undersigned makes application for change of beneficiary in accordance with the provisions of Sec. 490, Supreme Statutes, Insurance Department Laws, Sec. 31, Chap. 6 and Sec. No. 492 Supreme Statutes, Insurance Department Laws, Sec. 33, Chap. 6 and for that purpose respectfully submits the following:

Benefit Certificate in the 4th Class, Plan — Insurance Department, No. 4651, was issued on the 11<sup>th</sup> day of June A. D. 1885 to the undersigned, which certificate is hereby surrendered for cancellation upon the issuance to the undersigned of a certificate or certificates in lieu thereof in accordance with this application. The warranties, statements and agreements binding upon the undersigned under said surrender certificate, except in so far as they are modified by this application or the laws now in force governing the Insurance Department, are to be considered as here repeated; and enter into and become a part of the contract to be evidenced by the certificate or certificates hereby applied for when issued.

I direct that a certificate or certificates be issued to me in the class and upon the plans as hereinafter designated, to-wit:

1. In 4th Class, on Plan (State what plan by name) same as before for (State amt. on this plan) \$2,000.00, payable to (Write plainly first and last name of beneficiary) George O. Meyer, who is related to me (State Kinship) as son.

2. In — Class, on Plan (State what plan by name) — for (State amt. on this plan) \$—, payable to (Write plainly first and last name of beneficiary) —, who is related to me as (State Kinship) —.

3. In — Class, on Plan (State what plan by name) — for (State amt. on this plan) \$—, payable to (Write plainly first and last name of beneficiary) —, who is related to me as (State Kinship) —.

4. In — Class, on Plan (State what plan by name) — for (State amt. on this plan) \$—, payable to (Write plainly first and last name of beneficiary) —, who is related to me as (State Kinship) —.

I warrant the truth of the statements with reference to kinship of the proposed beneficiary or beneficiaries.

Witness my hand and seal this 31st day of May, A. D. 1910.  
(Signed) Louis J. Meyer. Member must sign in person and with first name in full. Witness: D. W. Livingston. (Seal Endowment Rank, Section 106, Knights of Pythias.)

I certify to the identity of the member signing the above. E. D. McCallum, Secretary of Section No. 106.

NOTE.—Change of beneficiary can be made only in accordance with the provisions of the Supreme Statutes referred to, and no change will be valid until application therefor upon this form is accepted by the Board of Control.

80 When signature of Section Secretary cannot be obtained, the member must acknowledge signature before an officer authorized to take acknowledgements, who will officially certify to his character and the date of the expiration of his term of office.

If the new certificate or certificates applied for are to be issued in the Fourth Class, all record to the "Plan" may be eliminated by drawing pen through proper blank.

### **COPY OF EXHIBIT No. 5 AS PER STIPULATION.**

May 18, 1911.

Mr. L. J. Meyer, Nebraska City, Nebr.

DEAR SIR AND BROTHER: I write to advise you that we are holding to your credit in this office unapplied and subject to your order, the amount of \$5.70, in view of the fact that this amount was insufficient to be credited to your account. Your membership stands forfeited on our records for the month of January, and, therefore, this amount will be returned to you at your pleasure.

I also wish to advise you that Brother E. D. McCallum, the former Secretary of your Section, also stands suspended for the same month and has been removed as Secretary of the Section. If you desire this amount refunded, kindly advise us at once and we will send you a check in the amount indicated above. Fraternaly yours, W. O. Powers, General Secretary. WOP-H.

### **81 COPY OF EXHIBIT No. 6 AS PER STIPULATION.**

Public No. 96.

*An Act to Incorporate the Supreme Lodge of the Knights of Pythias.*

Be it enacted by the Senate and House of Representatives of the United States of America, in Congress Assembled:

That Geo. B. Shaw, of the City of Eau Claire, State of Wisconsin; William W. Blackwell, of the City of Henderson, State of Kentucky; Walter B. Richie, of the City of Lima, State of Ohio; Robert L. C.

White, of the City of Nashville, State of Tennessee; Philip T. Colgrove, of the City of Hastings, State of Michigan, and Tracy R. Bangs, of the City of Grand Forks, State of North Dakota, officers and members of the Supreme Lodge, Knights of Pythias, and their successors, be and they are hereby incorporated and made a body politic and corporate in the District of Columbia, by the name of "The Supreme Lodge Knights of Pythias," and by that name it may sue and be sued, plead and be impleaded, in any court of law or equity, and may have and use a common seal, and change the same at pleasure, and be entitled to use and exercise all the powers, rights and privileges incidental to fraternal and benevolent corporations within the District of Columbia.

Sec. 2. That the said corporation shall have the power to take and hold real and personal estate, not exceeding in value one hundred thousand dollars, which shall not be divided among the members of the corporation, but shall descend to their successors for the promotion of the fraternal and benevolent purposes of said corporation.

Sec. 3. That all claims, accounts, debts, things in action or other matters of business of whatever nature now existing for or against the present Supreme Lodge Knights of Pythias mentioned in section 1 of this act, shall survive and succeed to and against the body corporate and politic hereby created; provided that nothing contained herein shall be construed to extend the operation of any law which provides for the extinguishing of claims or contract by limitations of time.

Sec. 4. That said corporation shall have a constitution and shall have power to amend the same at pleasure; provided that such constitution or amendments thereof do not conflict with the laws of the United States or of any State.

Sec. 5. That said corporation shall not engage in any business for gain; the purposes of said corporation being fraternal and benevolent.

Sec. 6. That Congress may at any time amend, alter or repeal this act.

Approved June 29, 1894.

(28 U. S. Statutes at Large, 96 and 97.)

### COPY OF EXHIBIT No. 7 AS PER STIPULATION.

Ex. B. C. A. C., Notary.

#### Index.

##### A.

##### Pages.

Answer in Holt et al. case .....	33- 61
Amendment to Answer in Holt Case .....	62- 67
Amended Answer " " " .....	71-108
Answer in Heimsoth et al. Case .....	121-153
Amendment to Defendant's Answer in Heimsoth Case ...	157-161
Answer to Supplemental Bill " " " ...	165-168
Amendment to Answer " " " ...	169-171



	Pages.
Amendment to Answer and Supplemental Answer in Heimsoth case .....	171-173
Answer of Complainants to Cross Bill in Holt Case .....	240-244
B.	
Bill of Complaint in Holt Case .....	1- 31
Bill of Complaint in Heimsoth Case .....	119-120
C.	
Cross Bill in Holt Case, setting up Heimsoth Case as res adjudicata .....	118-233
Complainant's Exceptions to Master's Report in Holt Case .....	300-304
D.	
Decree Pro Confesso vs. U. S. G. Cherry in Heimsoth Case .	156
E.	
Final Decree in Heimsoth Case .....	232-235
Final Judgment in Holt Case .....	313
I.	
Intervening petition of W. R. Petree in Heimsoth Case ..	173-175
83	
M.	
Master's Report in Heimsoth Case .....	180-231
Master's Report in Holt Case .....	248-298
N.	
Notice of Petition for leave to file Cross Bill in Holt Case .	116
O.	
Order of Reference to Edward Daniels, Special Master in Holt case .....	109
P.	
Petition of Defendant for leave to file Cross Bill in Holt case .....	110-115
R.	
Replication in Holt Case .....	68- 69
Replication in Heimsoth Case .....	154-155



## S.

## Pages.

Supplemental Bill in Heimsoth Case .....	162-164
Stipulation in Heimsoth Case .....	176-178
Stipulation in Holt Case .....	246
Stipulation in Holt Case .....	306-311

"Pleas of the District Court of the United States for the District of Indiana begun and holden at the United States Court House, in the City of Indianapolis, in said District, on the first Tuesday in May, in the year of our Lord one thousand nine hundred and thirteen, before the Honorable Albert B. Anderson, Judge of said District Court.

## No. 11218. In Equity.

JOSEPH HOLT, VICTOR MAUBERRETT, ROSS CARLIN, FRANK RIBARA, William R. Smith, John B. Chisolm, Henry A. Weber, David Lemley, Edward F. Denechaud, James A. Douglas, Joseph E. Jolet, Moses Heidingsfelder, Thomas Carey, Louis Scherck, Philip Rahm, Joseph I. Barnett, John Leckert, T. Sidney Weber, David R. Graham, Lewis Fishel, Plaintiffs,

## v.

SUPREME LODGE KNIGHTS OF PYTHIAS, Defendant.

Be it remembered that heretofore, to-wit: at the November Term of the Circuit Court of the United States for the District of Indiana, on the 25th day of January, 1911, before the Honorable Albert B. Anderson, one of the Judges of said court, the following proceedings in the above entitled cause were had, to-wit:

84 Come now the complainants by Messers. Lazarus, Michel and Lazarus and Messers. Miller and Dowling, their solicitors, and file their Bill of Complaint in the above entitled cause in the words following, to-wit:

## 2.

To the honorable the Judges of the United States Circuit Court for the District of Indiana:

**BILL OF COMPLAINT.**

Joseph Holt, Victor Mauberrret, Ross Carlin, Frank Ribera, William R. Smith, John D. Chisolm, Henry A. Weber, David Lemley, Edward F. Denechaud, James A. Douglas, Joseph E. Jolet, Moses Heidingsfelder, Thomas Carey, Louis Scherck, Philip Rahm, Joseph I. Barnett, John Leckert, T. Sidney Weber, David R. Graham, and Lewis Fishel, each being a citizen and resident of the State of Louisiana, on behalf of themselves and all other persons similarly situated, bring this, their bill of complaint, against the Supreme Lodge of the

**Knights of Pythias**, a corporation created and existing under an Act of Congress of the United States approved June 29, 1894, and which corporation is, by virtue of said act, subject to sue and be sued, to plead and be impleaded, in any court of law or equity of the United States; that said corporation has its offices and principal place of

## 3

business in the City of Indianapolis and State of Indiana.

That said corporation was organized as a fraternal and benevolent association, and under its grant it established, for the protection of its members, and operated as an incident to its fraternal and benevolent purposes an insurance department; that the said department, known as the Endowment Rank, was established for the purpose of providing indemnity for the beneficiaries of the deceased members of the order; the membership in such insurance department being

restricted to the members of the order who had attained the  
85 Knight and were in good standing in a subordinate lodge, but indentification with said Endowment Rank was not compulsory upon any member of the order; that the jurisdiction of the said Supreme Lodge of the Knights of Pythias, is, under the Act of Congress aforesaid, co-extensive with the territorial limits of the United States, under whose grant it has corporate existence.

That said Supreme Lodge of the Knights of Pythias has established throughout the United States Grand Lodges in the several states and territories, and under the authority conferred the said Grand Lodges have organized subordinate lodges, which are responsible and attorn to the Grand Lodges of the State or territory under which they are chartered, and all of said Grand Lodges are subject to the control of the Supreme Lodge of the Knights of Pythias.

That the said Supreme Lodge of the Knights of Pythias established in the State of Louisiana a Grand Lodge, and that said Grand Lodge has, in furtherance of its grant of power from the Supreme Lodge of the Knights of Pythias, as aforesaid, established subordinate lodges; that individuals possessing the requisite qualifications as provided by the Statutes of the Supreme Lodge of the Knights of Pythias are entitled to admission to said subordinate lodges as

## 4

**Knights of Pythias**, for fraternal and benevolent purposes, and that your orators are and have been members in good standing of the Order Knights of Pythias, established in said State of Louisiana under the conditions hereinbefore recited.

Your orators further complain and say, that in furtherance of the objects and purposes of the organization, the Supreme Lodge of the Knights of Pythias established a system of insurance for the protection of its members and their named beneficiaries, or of those who complied with the conditions imposed by the the Supreme Lodge of the Knights of Pythias, and who desire to take advantage of the protection offered in the insurance department of said organization;

that the insurance department was an adjunct to said organization, but it was not incumbent upon the members of said organization to join or participate therein.

Your orators further complain and say, that the basis upon which the said insurance department was primarily organized, was an assessment levied upon those members belonging to the insurance department, to meet the obligations incurred by the Supreme Lodge of the Knights of Pythias upon policies of insurance issued by it for the protection of the beneficiaries named by the assured in the policies; that in the primary organization of the insurance department there were formed from time to time, by the Supreme Lodge of the Knights of Pythias different classes of membership, and the assessment basis, as aforesaid, was applied upon the members belonging to said various classes, which were organized as aforesaid.

Your orators further complain and say, that after the operation of the assessment system for a number of years, the said Supreme Lodge of the Knights of Pythias realized that the insurance on the lives of members, based upon the assessment plan, was not practicable

## 5

and that finally it would result in leaving a number of the members belonging to their respective classes unprovided for, owing to the depletion by the death of the membership of the different classes.

That thereupon, the said Supreme Lodge of the Knights of Pythias, with a view to the ultimate protection of its obligations under the policies which it issued upon the lives of the said members, organized the Fourth Class, and from the prior classes transferred the remaining members to said Fourth Class.

That in the establishment of the Fourth Class, as aforesaid, the said Supreme Lodge of the Knights of Pythias abandoned the assessment system which prevailed in the first, second and third classes, as aforesaid, and established as a basis for the protection of its members by insurance, under the policies which it issued, a fixed premium or flat rate, based upon the age of the members joining

said Fourth Class, and the basis of said rate of insurance per one thousand dollars was that formulated by the National Fraternal Congress, upon an established and accepted mortality table.

That under the constitution of the order of the Knights of Pythias, establishing the insurance department for the Fourth Class, it was provided that the endowment fund for the payment of benefits in the Fourth Class shall be derived from monthly payments by each member, said payments to be for each one Thousand Dollars of insurance and to be graded according to the age of the member at the time of making application and his expectancy of life, the age to be taken at his nearest birthday. That so much of such monthly payments as shall equal the actual cost of the insurance shall constitute the Endowment Fund, and the residue of such monthly payments shall be placed in a reserve fund. Said monthly payments shall be based upon the average expectancy of life of the applicant

## 6

and shall continue the same so long as his membership continues, the said monthly payments for the endowment and reserve fund shall be, according to the table of rates established by the National Fraternal Congress.

Under the provisions of the law aforesaid, a tabulated table of rates was established, based upon the member's age, and there was determined what proportion of rates paid for the insurance due should be apportioned to the endowment fund, and what portion out of said rates should be dedicated to the reserve and trust fund, together with the monthly dues paid by the members of said endowment fund, all of which are set out in detail and form part of the constitutional provisions hereinbefore referred to.

88 Your orators further complain and say, that by the constitution of the order it was further provided that the reserve fund, consisting of the membership fees and parts of monthly payments as provided in Section 5 of Article 5 of the Constitution of the Endowment Rank shall be in the keeping of the Supreme Master of the Exchequer, and so much thereof as may not be needed for the expenses of this class shall be invested by him under the superintendence of the Board of Control.

Your orators further complain and say, that the objects and purposes of the foregoing constitutional provision, with reference to the payment of fixed rates, upon the insurance carried by its members, are stated by the Supreme Lodge to be that it should be uniform in its requirements as nearly as possible, that the assessments ought not to increase in amount with the increasing age of the rank, so that no member will be compelled to pay increased assessments on account of the increased mortality among the older members. Under this plan, the assessments are fixed in accordance with the age of the member at the time he enters the rank and remains the same during his life time, and the establishment of the reserve fund was to protect the obligations of the Fourth Class and thus maintain a uniform rate.

## 7

All of the above recitals are supported by the records of the Supreme Lodge of the Knights of Pythias, and will more fully and at large appear by reference to the proceedings of the said Supreme Lodge of the Knights of Pythias, reported in the Journals of the Supreme Lodge of the Knights of Pythias, which are annexed hereto in support of the averments herein, and which journals are made part hereof as though the recitals contained in said constitutional articles were set out at large in this bill.

89 Your orators further complain and say, that availing themselves of the benefits of the insurance department of the Supreme Lodge of the Knights of Pythias, which was organized on the basis aforesaid, creating an endowment and reserve fund, they have, ever since their membership therein, regularly and continuously

paid into the Supreme Lodge of the Knights of Pythias, through their respective subordinate sections, the premiums due upon the policies of insurance issued to them as members of the Fourth Class, and that said funds so contributed by your orators and others similarly situated, constituted an endowment, reserve and trust fund for the payment of the policies of insurance issued to your orators, and others similarly situated, in the event of death; that said trust funds so contributed by your orators and others similarly situated, have been from time to time, under the directions of the officers of the Supreme Lodge of the Knights of Pythias and from the reserve fund provided for in the constitution of the Endowment Rank, invested in interest bearing securities, which were held by the Board of Control, and represent the reserve and trust fund of the Fourth Class, to meet the obligations of the said Supreme Lodge of the Knights of Pythias, which obligated itself, unconditionally, to maintain the rates of contribution so long as your orators were members

## 8

of said rank, and to pay out of the said fund, to the beneficiaries of the said policies of insurance issued to your orators, the amount called for by the policies, which your orators, and others similarly situated, held and still continue to hold.

Your orators further complain and say, that during their membership they have, in accordance with the directions of the said Supreme Lodge of the Knights of Pythias, and the provisions of its constitution, as aforesaid, and the conditions of the policies which they hold and upon which they rely, contributed regularly, the monthly amount therein recited. That the premiums, under their policies, were payable monthly, in advance, and that your orators, on January 2nd, 1911. (that being the first legal day of the month), 90 duly tendered the premiums respectively due by them under their policies, to the authorized representative of the subordinate sections of which they were members, and that said tender was, in accordance with the directions of the Supreme Lodge of the Knights of Pythias refused, and that then your orators protested against the action of the Supreme Lodge of the Knights of Pythias in refusing to accept the payment of your orators' monthly dues, under the policies issued to and held by them.

Your orators further complain and say, that the Fourth Class, to which they belonged, was organized by the Supreme Lodge of the Knights of Pythias in 1884; that its membership on December 31, 1906, had reached a total of eighty-one thousand eight hundred and nineteen (81,819), and that at that time there was no other class of insurance in the Endowment Rank, except that of the Fourth Class, to which your orators belonged, the first, second and third classes having been practically eliminated, either from the members voluntarily identifying themselves with the Fourth Class, or their abandonment of the insurance under the earlier classes, or the mortality of their members.

## 9.

Your orators further complain and say, that in 1906, with the membership as aforesaid, the total liabilities under the contracts of insurance of the Supreme Lodge of the Knights of Pythias, outstanding, represented the sum of One Hundred and Twenty-five Million, Four Hundred and Twenty-five Thousand Dollars (\$125,455,000); that the endowment, reserve and trust funds, at the time aforesaid, to meet the obligations due the members of the Fourth Class, carrying insurance as aforesaid, was as shown by the report of the Board of Control of the Supreme Lodge of the Knights of Pythias, the sum of One Million, One Hundred and eighty-nine thousand, Two Hundred and Seventy-seven and 53/100 Dollars (\$1,189,277.53); that the membership of the said Fourth Class was

11 advancing in years and that the mortality of said class was necessarily increasing, ultimately threatening the destruction of that part of the Knights of Pythias known as the Endowment Rank, owing to the inability of the Supreme Lodge to meet the obligations that it had assumed, under the policies of insurance which it had issued; that realizing its perilous condition, and its inability to discharge its obligations, and in consequence thereof the ultimate dismemberment and dissolution of the organization, not only as an insurance department, but as a fraternal and benevolent association, it called to its assistance men skilled as actuaries in life insurance, to formulate a plan by which the Supreme Lodge of the Knights of Pythias could relieve itself of the obligations which it had assumed towards the membership of its insurance department, and to place the said insurance department of the order upon a basis which would enable it in the future to carry out its contracts.

The Supreme Lodge of the Knights of Pythias, adopted a plan outlined and suggested by an experienced actuary, the basis of which plan is what is known generally as a flat rate premium for insurance, based upon rates exacted by the Old Line Life Insurance Companies,

## 10

the result of the adoption of which plan and the establishment of the Fifth Class was to charge an increased rate of premiums, based upon the then age of the members of the Fourth Class, whom it was designed to transfer and have become members of the Fifth Class.

That this plan was adopted notwithstanding the fact that the obligations of the Supreme Lodge of the Knights of Pythias, under which your orators' policies were issued, were to maintain during the life of your orators a basis of premiums fixed in the policies as provided in the constitution of the order, and were not to increase or augment the same, nor in any manner change, violate or impair the obligation of the contracts, which your orators had entered into with the said Supreme Lodge of the Knights of Pythias.

92 Your orators further complain and say, that the increased premium fixed for the Fifth Class, based upon the age which your orators had attained, after a membership in the order of the



Knights of Pythias, and in the Endowment Rank, for a period of twenty-five years, and when your orators' earning capacity had been lessened, in consequence of the infirmities of age, is destructive of their rights, and of the obligations assumed by the said Supreme Lodge of the Knights of Pythias, at the time the policies which your orators now hold were issued, and to which they are entitled to the protection of the courts and to the relief which they herein seek.

Your orators further complain and say, that at the biennial meeting of the Supreme Lodge of the Knights of Pythias, in 1906, the Supreme Lodge sought, by the proceedings had at said meeting, to divorce the insurance department of the said order from the fraternal and benevolent part thereof, and to make it an independent part of the said organization, and this by the organization of the Fifth

## 11

Class, and the issuance of policies by the Board of Control of the Insurance Department, instead of policies issued, as heretofore, by the Supreme Lodge of the Knights of Pythias, of the character held by your orators, and for which policies the Supreme Lodge of the Knights of Pythias recognized not only its legal but its moral and fraternal responsibility, and the said Supreme Lodge resolved to protect every beneficial certificate issued by it, and in force and in the endowment rank of the Knights of Pythias, Fourth Class, and pledged to every holder of such certificate all such legislation as might be needed to fully protect the holders of the said certificates, and to make full and prompt payment thereon, all of which will more fully and at large appear by reference to the proceedings of the Supreme Lodge of the Knights of Pythias, held in Chicago, Illinois, July 5, 1901.

93 Your orators further complain and say, that by the action of the Supreme Lodge of the Knights of Pythias, and by its attempt to increase its rates of insurance upon the policies issued to and held by your orators, as aforesaid, the Supreme Lodge attempted to violate not only its contract obligations, but its pledged faith, and that of the entire order, for the protection of the rights of your orators and their beneficiaries, under the policies issued by the Supreme Lodge as aforesaid.

Your orators further complain and say, that the Supreme Lodge, after formulating a plan for the establishment of the Fifth Class, as hereinbefore recited, directed the issuance of notices to members of the Fourth Class, advising them that it was impossible to continue the Fourth Class as established, and offering to them alternative propositions to surrender their rights in the Fourth Class, and to become members of the Fifth Class, thereby surrendering their contract rights and the protection accorded them under the policies issued by the Supreme Lodge of the Knights of Pythias, and offering in lieu of the policies held by them, the policy of the insurance department of the Knights of Pythias, and releasing the Supreme Lodge of the Knights of Pythias from its liability thereunder with increased rates, and which policies when accepted should be subject to contest within three years from the date of the issuance thereof,



and that if your orators, and others similarly situated, failed to avail themselves of the propositions submitted, as embodied in the announcement made by the Supreme Lodge of the Knights of Pythias (which formal proposition is annexed hereto and made part hereof, as Exhibit "A," and the same is to be considered as though the recitals thereof were set out herein in extenso), all of their rights under the policies which they hold would be lost and your orators would be denied any benefit or advantage arising out of said policies,

94 although the Supreme Lodge of the Knights of Pythias bound and obligated itself to pay your orators, and those similarly situated, the amount that their policies called for, under the provisions recited in said policies, and to protect its obligations as aforesaid, created the reserve fund hereinbefore referred to.

Your orators further complain and say, that the actions hereinbefore recited, of the Supreme Lodge of the Knights of Pythias, in attempting to destroy the rights of your orators under the policies held by them, and to deprive them of their rights to participate in the endowment, reserve and trust fund, contributed by your orators and those similarly situated, would, if its plans were carried into effect, be destructive of your orators' rights to a participation in the said trust fund, which they created as aforesaid, and which was to be administered by the officers of the said Supreme Lodge for the use, benefit and advantage of the members of the Fourth Class.

Your orators further complain and say, that since 1906, the Board of Control, in furthering the interesting of the Fifth Class, to the prejudice of the rights of your orators and those similarly situated, have mainly by their efforts reduced the membership of the Fourth Class, from eighty-one thousand, eight hundred and nineteen (81,819), to ten thousand eight hundred and thirty-two (10,832), according to the official report of the said Supreme Lodge of the Knights of Pythias, and the remaining members of the Fourth Class are carrying insurance aggregating the sum of Twenty Million, Six Hundred and Sixty-seven Thousand, Five Hundred Dollars (\$20,667,500.); that the Endowment or reserve Fund belonging to said Fourth Class, was, on October 31, 1910, the sum of Six Hundred and Fifteen Thousand, Five Hundred and sixty-eight and 49/100 Dollars (\$615,568.49), an amount wholly inadequate to protect the members belonging to the Fourth Class, and to meet the obligations thereof by the Supreme Lodge of the Knights of Pythias.

95 Your orators further complain and say, that the Supreme Government of the Knights of Pythias, through its Supreme Chancellor, recites in an open letter addressed to the members of the Fourth Class, that the receipts of the mortuary fund for 1908 amounted to One Million, One Hundred and Seventy-three Thousand and Sixty-six and 38/100 Dollars (\$1,163,066.38), making an excess of disbursements over receipts in the Fourth Class of Two Hundred and Twenty-eight Thousand, Seven Hundred and Twenty-four and 24/100 Dollars, (\$228,724.24) that in 1909, the losses occurring in the Fourth Class, created a liability of Nine Hundred and Ninety Thousand, Five Hundred Dollars, (\$990,500);

that the total mortuary receipts of the Fourth Class during that year were Six Hundred and Thirty-eight Thousand, Eight Hundred and Eighty-five and 63/100 (\$638,885.63); that the total disbursements in the Fourth Class amounted to One Million and Forty Thousand, Four Hundred and Eighty-four and 7/100 Dollars (\$1,040,484.07), an excess over receipts of Four Hundred and One Thousand, Five

## 14

Hundred and Ninety-eight and 44/100 Dollars, (\$401,598.44); that the mortuary receipts for the Fourth Class, for the first six months of 1910 amounted to Two Hundred and Eighty-nine Thousand, Five Hundred and Nineteen and 6/100 Dollars (\$289,519.06); that the disbursements for the first six months of 1910, amounted to Four Hundred and Thirty nine Thousand, Three Hundred and Fifty-six Dollars (\$439,356) making an excess of disbursements over receipts of One Hundred and Forty-nine Thousand Eight Hundred and Forty-five and 94/100 Dollars, (\$149,845.94) notwithstanding the fact that three special assessments of double the amount had been levied. That the excess disbursements over the receipts for the years 1908, 1909, and the first six months of 1910, amounted to Seven Hundred and Eighty Thousand, One Hundred and Sixty-eight, and 82/100 Dollars, (\$780,168.82), and if special assessments had not been levied during this period the disbursements would have exceeded the receipts at least One Million Dollars. That the number of members of the Fourth Class on October 31, 1910,

96 was ten thousand eight hundred and thirty-two (10,832) carrying insurance to the amount of Twenty Million, Six Hundred and Sixty-seven Thousand, Five Hundred Dollars (\$20,667,500), and the amount in the mortuary fund of the Fourth Class on October 31, 1910, was Six Hundred and Fifteen Thousand, five hundred and sixty-eight, and 49/100 Dollars (\$615,568.49); whereas, upon the basis of the insurance carried by the members of the Fourth Class, and upon their respective ages, as figured by the actuary appointed by the Supreme Lodge of the Knights of Pythias to formulate a plan for a safe insurance, the reserve should have been upwards of Seven Million Dollars, (\$7,000,000) establishing thereby the inadequacy of the reserve fund to meet the maturing obligations of the Fourth Class, and the utter and hopeless insolvency of the Fourth Class as an insurance department of the order of the Knights of Pythias.

## 15

Your orators further complain and say, that as shown by the reports of the Supreme Lodge of the Knights of Pythias, the membership composing the Fourth Class, on September 1, 1909, embraced Sixty-six members over the age of eighty years, carrying insurance amounting to One Hundred and Twenty-four Thousand Dollars, (\$124,000); three hundred and sixty-one members over the age of seventy-six years, carrying insurance to the amount of Seven Hundred and Sixty-four Thousand Dollars (\$764,000), and Two thousand, six hundred and seventy-three members over the age

of sixty-five years, carrying insurance to the amount of Five Million, Seven Hundred and Ninety-seven Thousand, Five Hundred Dollars, (\$5,797,500); that the average period of a man's life, according to the statistics, is — years, and that those members of the Fourth Class, whose ages are below those of sixty-five have, upon the basis of the actuary's statistics, reached the average time upon which insurance rates are calculated, and in consequence thereof the mortality of said Fourth Class must be necessarily increased, calling, as it does, for a reserve ten times larger than that presently held by the Supreme Lodge, to meet the demands of the members of said Fourth Class.

97 Your orators further complain and say, that with the limited reserve, the immediately maturing obligations of the members of the Fourth Class, which will, in all probability, be absorbed during the life of your orators and to their great prejudice and injury, the said reserve being a trust fund for all of the members of the said Fourth Class, your orators have the right to protect said fund from further impairment, and as hereinafter prayed, and to have an accounting and ratable distribution of the said fund, among the members belonging to the endowment rank of the Fourth Class.

## 16

Your orators further complain and say, that the Supreme Lodge of the Knights of Pythias, in the establishment of the Endowment Rank, and of the Fourth Class thereunder, created a Board of Control, who were charged inter alia with the administration and protection of the endowment and reserve fund of the said Endowment Rank; that being grossly negligent in the performance of their duty, the said trust fund was, by the officers in charge, misappropriated and embezzled prior to 1901, depleting said trust fund, established for the benefit of the members of the Fourth Class that the administration of the fund by the officials of the Supreme Lodge of the Knights of Pythias was dishonest and reckless, entailing heavy losses, to said fund, and that according to the report made to the Supreme Lodge in 1906, it was impossible to tell from the records and books of the said organization the condition of the finances of the insurance department; that auditors were called in to examine and report upon the condition of the fund of the insurance department, and were unable, from the disgraceful condition of the records, to state how much money had been lost and how much abstracted from the fund dedicated as a trust fund, for

the benefit of all the members of the Fourth Class, all of which will more fully and at large appear by reference to the reports of the proceedings of the Supreme Lodge of the Knights of Pythias, copies of which are hereto attached and made part hereof.

98 Your orators further complain and say, that those in control of the insurance department, recognizing the inability of the Supreme Lodge to carry out and fulfill its obligations to the members of the Endowment Rank, holding policies in the Fourth Class, formulated

a plan to organize the Fifth Class, as hereinbefore recited, and that appeals were made to the members of the Fourth Class, by those in charge of the Insurance Department, to abandon the Fourth Class, and to enter into the Fifth Class, organized upon the basis hereinbefore recited, the effect of which was to withdraw from the Fourth Class upwards of seventy thousand members, under the age of fifty years, who, as contributors of the Fourth Class, during their membership, would have maintained a reserve fund sufficiently large, if honestly and judiciously administered, to protect the older members of the Fourth Class, among whom are your orators; that the acts of those in control, as aforesaid, imperiled the reserve and trust fund, to which your orators looked for protection of its obligations, under the contracts of insurance which the Supreme Lodge issued and for which it was legally responsible.

Your orators further complain and say, that they are informed and believe, and so aver, that in the administration of the said trust fund, by the officers of the Supreme Lodge of the Knights of Pythias, there was in the year 1901, and several years prior thereto, abstracted therefrom a sum in excess of Five Hundred Thousand Dollars (\$500,000).

That in order to protect the said trust fund, belonging to the Fourth Class, established for the purposes aforesaid, there was a voluntary contribution on the part of your orators and other members of the insurance department of the Fourth Class, of an amount sufficient to replace the funds abstracted; that the voluntary contribution by the members of the said Fourth Class, for the purposes aforesaid, increased to that extent the said trust fund, which should have been held as security for the payment of the obligations arising out of the policies issued against the said fund in the Fourth Class.

That subsequently the Supreme Lodge of the Knights of Pythias came into possession, from the defaulting officers of said order, of an amount equal to said defalcation, with interest thereon, but instead of returning said fund to the Fourth Class and incorporating it with the said trust fund, to which it legitimately belonged, and

18

which constituted a part thereof, the said Supreme Lodge of the Knights of Pythias with-eld, and continues to with-eld, the said amount so collected and belonging to the trust fund, to the great wrong, injury and prejudice of the said members of the Fourth Class, who have a right, under the contracts and under the law, to look to said trust fund for protection, arising out of the policies of insurance issued to them, as aforesaid, the said trust fund representing their contribution thereto, for the purposes heretofore recited.

Your orators further complain and say, that the said Supreme Lodge of the Knights of Pythias, through the Board of Control of the Insurance Department, while administering the trust fund belonging to the said Fourth Class, abstracted and used from the said

fund the sum of Three Hundred and Ninety-four Thousand and eighty-two and 25/100 Dollars (\$394,082.25), in their advancement and development of the new scheme of insurance organized by the Supreme Lodge of the Knights of Pythias, and which scheme in effect looked to the dismemberment of the Fourth Class.

100 That the Supreme Lodge fully advised that the Board of Control had withdrawn from the trust funds aforesaid, the amount aforesaid, for the purposes aforesaid, declined and refused to order its reimbursement to the said trust fund, all of which will more fully and at large appear by reference to proceedings of the Supreme Lodge of the Knights of Pythias, held at Milwaukee, in 1910, a copy of which is hereto annexed and made part hereof.

Your orators further complain and say, that the moneys so withdrawn from the trust fund belonging to the fourth class was a breach of trust on the part of the officers of the said order, to the prejudice of the members belonging to the Fourth Class, and that the Fifth Class having had the benefit thereof, and the said fund having been used for its advantage, the officers of the said Supreme Lodge of the Knights of Pythias, should be ordered to account to the trust fund of the Fourth Class and to return the amount so ab-

## 19

stracted from the fund of the Fourth Class, as aforesaid.

Your orators further complain and say, that there are no new members being received into said Fourth Class, and no efforts are being made by the defendant to increase the membership thereof, or the trust funds available for the benefit of said Fourth Class members, but, on the contrary, efforts are continually being made by the Defendant to induce members of said Fourth Class to leave the same and become members of said Fifth Class, thereby further reducing the source of income for the trust funds created for the benefit of said Fourth Class members; that the said trust fund of the Fourth Class, even if augmented by the funds illegally withheld by the Supreme Lodge of the Knights of Pythias, resulting from the defalcations hereinbefore referred to, and even upon an accounting by the officers of the Supreme Lodge of the Knights of Pythias, for the funds abstracted and withdrawn from the reserve

fund of the Fourth Class for the purpose of the advancement of the Fifth Class, would be wholly inadequate to

101 meet the obligations which must be met by members of the

Fourth Class, even though every member continued to promptly pay his assessments, based upon the policies issued, and that, therefore, the said Fourth Class endowment and trust fund being wholly inadequate to meet the obligations aforesaid, is hopelessly and irretrievably insolvent, and should be administered for the benefit of those who contributed the same and who have maintained their relation as cestuis que trust.

Your orators further complain and say, that as the beneficiaries of the trust fund, they are entitled to have and maintain an action for an accounting from those who have abstracted or withheld moneys or securities belonging to said trust fund, or any part thereof.

Your orators further complain and say, that under the Supreme

## 20

Statutes of the Knights of Pythias, the endowment and trust fund of the Fourth Class is independent of the Fifth Class, and is to be treated as a separate and distinct society, and that, all of the moneys, bonds, mortgages, notes, credits, securities, and properties of every kind of the insurance department, composing the mortuary fund of the Fourth Class, are in the words of the statute "Declared to be a Trust Fund," and to be used exclusively for the benefit of the members of the Fourth Class. That by the action of the Board of Control of the insurance department of the Knights of Pythias, and the defalcations and abstractions hereinbefore referred to, the said trust fund, of the Fourth Class, has been so impaired as to be wholly inadequate to meet the obligations of the members of the Fourth Class, and the said fund, because of its impairment as aforesaid, and the withdrawal of members from the Fourth Class, is, as before recited, hopelessly and irretrievably insolvent.

102 Your orators further complain and say, that during their membership they have, in accordance with the directions of said Supreme Lodge, and the conditions of their policies, contributed regularly the amounts established by said Supreme Lodge of the Knights of Pythias.

That your orator, Joseph Holt, holding Policy No. — and belonging to Section — of the Endowment Rank has since 1885 in said Fourth Class, insurance upon his life for the beneficiaries named in said policy, for the sum of Three Thousand Dollars, (\$3,000) and he has from time to time, voluntarily contributed to said reserve fund an amount equal, if not in excess of his regular assessment dues.

That your orator, Victor Mauberret, holding policy No. 11248 and belonging to Section 350 of the Endowment Rank, had since 1885 in said Fourth Class, insurance upon his life, for the beneficiaries named in said policy, for the sum of Three Thousand Dollars

## 21

(\$3,000) and he has from time to time voluntarily contributed to said reserve fund an amount equal, if not in excess of his regular assessment dues.

That your orator Ross Carlin, holding policy No. 1679, and belonging to Section 55 of the Endowment Rank, had since 1885, in said Fourth Class, insurance upon his life, for the beneficiaries named in said policy, for the sum of Two Thousand Dollars (\$2,000) and he has, from time to time voluntarily contributed to said reserve fund an amount equal if not in excess of his regular assessment dues.

That your orator, Frank Ribara, holding policy No. 29356, and



belonging to Section 1280 of the Endowment Rank, had since 1885 in said Fourth Class, insurance upon his life, for the beneficiaries named in said policy, for the sum of Three Thousand Dollars (\$3,000) and he has, from time to time voluntarily contributed to said reserve fund an amount equal if not in excess of his regular assessment dues.

103 That your orator, Wm. R. Smith, holding policy No. 177947 and belonging to Section 350 of the Endowment Rank, had since 1885, in said Fourth Class, insurance upon his life, for the beneficiaries named in said policy, for the sum of one thousand Dollars (\$1,000) and he has from time to time voluntarily contributed to said reserve fund an amount equal, if not in excess of his regular assessment dues.

That your orator, J. B. Chisolm, holding policy No. 22972, and belonging to section 350 of the Endowment Rank, had since 1885 in said Fourth Class, insurance upon his life, for the beneficiaries named in said policy, for the sum of Two Thousand Dollars (\$2,000) and he has from time to time, voluntarily contributed to said reserve fund an amount equal, if not in excess of his regular assessment dues.

That your orator, Henry A. Weber, holding Policy No. 8160, and

## 22

belonging to Section 350 of the Endowment Rank, had since 1885, in said Fourth Class, insurance upon his life for the beneficiaries named in said policy for the sum of Three Thousand Dollars (\$3,000) and he has from time to time voluntarily contributed to said reserve fund, an amount equal, if not in excess of his regular assessment dues.

That your orator, James A. Douglas, holding Policy No. 12150, and belonging to Section 350 of the Endowment Rank, had since 1885 in said Fourth Class, insurance upon his life, for the beneficiaries named in said policy, for the sum of Three Thousand Dollars (\$3,000) and he has from time to time voluntarily contributed to the said reserve fund an amount equal if not in excess of his regular assessment dues.

That your orator, David Lemley, holding policy No. 8147, and belonging to Section 350 of the Endowment Rank, had, since 1885, in said Fourth Class, insurance upon his life, for the beneficiaries, named in said policy for the sum of Two Thousand Dollars (\$2,000)

and he has from time to time voluntarily contributed to said reserve fund an amount equal, if not in excess of his regular assessment dues.

104 That your orator, Edward F. Denechaud, holding policy No. 15478, and belonging to Section 350 of the Endowment Rank, had since 1885, in said Fourth Class, insurance upon his life, for the beneficiaries named in said policy for the sum of Three Thousand Dollars (\$3,000) and he has, from time to time, voluntarily contributed to the said reserve fund an amount equal if not in excess of his regular assessment dues.



That your orator, Joseph E. Jolet, holding policy No. 26970, and belonging to Section 350 of the Endowment Rank, had since 1885, in said Fourth Class, insurance upon his life, for the beneficiaries named in said policy, for the sum of Three Thousand Dollars, and

## 23

he has from time to time voluntarily contributed to said reserve fund an amount equal, if not in excess of his regular assessment dues.

That your orator, Moses Heidengsfelder, holding policy No. 8052, and belonging to Section 363 of the Endowment Rank, had since 1885, in said Fourth Class, insurance upon his life, for the beneficiaries named in said policy, for the sum of Three Thousand Dollars (\$3,000) and he has from time to time voluntarily contributed to said reserve fund, an amount equal if not in excess of his regular assessment dues.

That your orator Thomas Carey, holding policy No. 116310, and belonging to Section 363 of the Endowment Rank, had since 1885, in said Fourth Class, insurance upon his life for the beneficiaries named in said policy, for the sum of Two Thousand Dollars (\$2,000) and he has from time to time voluntarily contributed to the said reserve fund an amount equal, if not in excess of his regular assessment dues.

That your orator, Louis Scherck, holding policy No. 12581, and belonging to Section 363 of the Endowment Rank, had since  
105 1885, in said Fourth Class, insurance upon his life for the beneficiaries named in said policy, for the sum of Three Thousand Dollars (\$3,000) and he has from time to time voluntarily contributed to the said reserve fund, an amount equal, if not in excess of his regular assessment dues.

That your orator, Phillip Rahm, holding policy No. 17837, and belonging to Section 363 of the Endowment Rank, had since 1885, in said Fourth Class, insurance upon his life, for the beneficiaries named in said policy, for the sum of Three Thousand Dollars (\$3,000) and he has, from time to time voluntarily contributed — said reserve fund, an amount equal, if not in excess of his regular assessment dues.

That your orator Joseph I. Barnett, holding policy No. 11240, and

## 24

belonging to Section 350 of the Endowment Rank, had since 1885, in said Fourth Class, insurance upon his life for the beneficiaries named in said policy, for the sum of One Thousand Dollars (\$1,000) and he has from time to time voluntarily contributed to said reserve fund an amount equal, if not in excess of his regular assessment dues.

That your orator, John Leckert, holding policy No. 15462, and belonging to Section 729 of the Endowment Rank, had since 1885, in said Fourth Class, insurance upon his life, for the beneficiaries named in said policy, for the sum of Two Thousand Dollars (\$2,000) and he has from time to time voluntarily contributed to said reserve fund an amount equal if not in excess of his regular assessment dues.

That your orator, T. Sidney Weber, holding policy No. 17249, and belonging to Section 657 of the Endowment Rank, had since 1885 in said Fourth Class, insurance upon his life, for the sum of Three Thousand Dollars (\$3,000) and he has from time to time voluntarily contributed to said reserve fund an amount equal, if not in excess of his regular assessment dues.

106 That your Orator, Lewis Fishel, holding policy No. 8167, and belonging to Section 350 of the Endowment Rank, had since 1885 in said Fourth Class, insurance upon his life, for the sum of Three Thousand Dollars (\$3,000) and he has from time to time voluntarily contributed to said reserve fund an amount equal, if not in excess of his regular assessment dues.

That your orator, David R. Graham, holding policy No. 22717, and belonging to section 350 of the Endowment Rank, had since 1885, in said Fourth Class, insurance upon his life, for the sum of — and he has, from time to time voluntarily contributed to said reserve fund an amount equal, if not in excess of his regular assessment dues.

Your orators further complain and say, that under the action of the Supreme Lodge, members of the Fourth Class who have not availed themselves of the option tendered by joining the Fifth Class, or who asserting their rights under the constitution of the order, for the maintenance of those rights, fixed at the date of the issuance of their policies, are deprived of the protection vouchsafed to them by their contracts, as evidence by the policies issued by the Supreme Lodge, and that their failure or refusal to either submit to the increased demands, which are confiscatory, in violation of the contract obligations of the Supreme Lodge, or to accept the alternative propositions submitted by said Supreme Lodge operates the dismemberment of the Fourth Class of the Endowment Rank, leaving solely to the members of the Fourth Class, the reserve or trust fund, to meet all of the obligations of said class.

Your orators further complain and say, that by the disingenuous process of elimination, formulated by the Supreme Lodge for the ultimate destruction of the Fourth Class of the Endowment Rank, the reserve or trust fund of the Fourth Class, and of which your orators are, in common with others similarly situated, *cestuis que trust*, will be seized upon by the said Supreme Lodge of the Knights of Pythias and diverted from its legitimate purposes, to-wit, 107 the protection of the members of the Fourth Class, or diverted by said Supreme Lodge in the interest of the Fifth class, who, as members of said class, have no interest therein. That said trust fund is the property of the members of the Fourth Class, who were, on the 1st of January, 1911, in good standing in their subordinate lodges, and who, up to the date aforesaid, had contributed regularly the monthly assessments due for the insurance which they carried under the policies issued to them by the Supreme Lodge of the Knights of Pythias.

Your orators further complain and say, that they are credibly informed and believe, and therefore aver that numerous members

## 26

of said Fourth Class are intending and are about to institute suits in various parts of the United States against the defendant to recover portions of said trust funds as constituting their present interests in the same as members of said Fourth Class; that if such suits are brought, and recovery is had therein, they will entail large expense upon such trust funds, and said funds will become further impaired and greatly reduced, and will be dissipated, and distributed inequitably among the members so suing, and the administration of said funds by the defendant will be seriously interfered with, by reason of the multiplicity of actions about to be brought; that it is to the advantage of the defendant and of all members of said Fourth Class that this Court assume jurisdiction over said funds forthwith, to the end that the same may be conserved and equitably administered and distributed for the benefit of all the members of said Fourth Class.

Your orators further complain and say, that the said deserve or trust fund results from the contributions of the members of the Fourth Class, and no longer being available for the purposes for which said trust fund was created, and being wholly inadequate to discharge the obligations of the Fourth Class, should be

108 ratably distributed among the members of the Fourth Class,

based upon the life of their contracts, and their monthly contributions during said contracts, to the fund which they thus created, and that a receiver should be appointed to take charge of said reserve and trust fund of the Fourth Class of the Knights of Pythias, and to administer the same and in the discharge of his duties as receiver, he should be directed to call to account the Supreme Lodge of the Knights of Pythias, for the funds collected from the defalcation of its officers, and which are now in its possession, and call for an accounting from the officers of the said Supreme Lodge of the Knights of Pythias and from the Board of Control of the moneys

## 27

illegally withdrawn by it in the development of the Fifth Class, and which funds constitute part of the trust fund belonging to the members of the Fourth Class.

Your orators further complain and say, that they annex hereto and make part of this, their bill of complaint, the official records of the Supreme Lodge of the Knights of Pythias, as reported in their journals, from the years 1884 and 1884, down to and including the journal of the proceedings of the order, in 1910, as well as the official communications of the officers of the Supreme Lodge, with reference to the condition of the Endowment Rank, Fourth Class, and the proposition submitted to the members thereof, which embody a repudiation by the Supreme Lodge and its officers, of the obligations which it assumed, and as evidenced by the policies which it issued to the members of the Fourth Class of the Endowment Rank of the Supreme Lodge of the Knights of Pythias, and your orators crave the consideration by the Court of the said records and docu-

ments hereto attached and forming part hereof, in connection with the recitals of fact contained in the foregoing bill, and which your orators submit entitled them, in common with their associate members of the Fourth Class, similarly situated, to the relief herein sought, in the appointment of a receiver of the trust fund belonging to the Fourth Class, and an accounting of the funds abstracted therefrom, belonging thereto, and a ratable distribution of the said funds, upon the basis hereinbefore recited.

109 Your orators further complain and say, that the Supreme Lodge of the Knights of Pythias is transacting business in the State and District of Indiana, and in the conduct thereof holds said trust funds belonging to said Fourth Class, to the amount of \$ — on deposit in the banks and other institutions of deposit within said State and District, and from said trust funds said defendant has made invest-

## 28

ments in notes, stocks, bonds and other securities which are held by said Supreme Lodge of the Knights of Pythias within said State and District, subject to the control of the officers of said Supreme Lodge of the Knights of Pythias; that all of said moneys on deposit, notes, stocks, bonds and other securities constituting the trust funds aforesaid, and the officers of said Supreme Lodge of the Knights of Pythias, are now within the jurisdiction of this Honorable Court, and within reach of its processes.

Your orators further complain and say, that the said trust fund was established for the common benefit of the contributors thereto, who are the cestuis que trust thereof, and that in order to preserve the same for ratable distribution among the beneficiaries thereof, and so as to prevent the payment of maturing obligations out of said fund, or the use thereof to those who only have a right to a common share therein, and which disbursements from said fund would be prejudicial and injurious to your orators, and those similarly situated, a receiver pendente lite of said fund, should be appointed in order to preserve said fund intact and for ratable distribution among the cestius que trust as set out in the bill of complaint herein.

Your orators further complain and say, that for the relief which they herein seek, through the appointment of a receiver to take charge and administer said trust funds, they are without adequate remedy at law, and therefore invoke the equity powers of this Honorable Court for the relief herein sought.

110 Your orators, in addition to the relief already prayed for pray for the appointment of an interlocutory receiver, pendente lite, to take charge of and hold intact the trust fund belonging to the Endowment Rank of the Fourth Class, and in the execution of said order to demand possession thereof from the officers of the Supreme Lodge of the Knights of Pythias presently in

## 29

possession thereof, and that said receiver shall hold said funds until the further orders of this Court.

And, your orators further pray, that the receiver so appointed be invested with all the powers of receivers in equity, and with a right as such to demand and secure possession of all moneys, properties or funds belonging to said reserve or trust fund of the Fourth Class, and to demand an accounting from any and all persons who have in his or their possession any part of the trust funds of said Fourth Class, and to demand from the officers of the said Supreme Lodge an accounting of funds withdrawn by them from said Fourth Class and not *accounts* for to said trust fund, as well as to demand the restitution of funds belonging to said Fourth Class, withheld by the Supreme Lodge, or any of the officers thereof, and the said Receiver shall be invested with such additional authority as is necessary to make the order herein effective, and shall have the right to from time to time to apply to this Court for the extension or enlargement of his powers as receiver, so as to make the decree hereinafter prayed for effective.

Your orators further pray, that upon final hearing it be adjudged that the reserve or trust fund belongs exclusively to the Fourth Class and the members thereof in good standing on January 1, 1911, and that the Supreme Lodge of the Knights of Pythias shall account to the receiver as the custodian and administrator of the reserve fund for all moneys collected by it from those who abstracted any part of the trust fund of the Fourth Class, or from securities or properties realized by the Supreme Lodge out of  
111 the defalcation of the officers, who at the time were in charge of said trust fund; and that it be further adjudged that the Supreme Lodge account for the trust funds withdrawn from the Fourth Class, for the advancement of the Fifth Class, and which moneys so withdrawn constitute a breach of the trust of those

## 30

administering the Fourth Class; and that it be further adjudged, that out of the funds so accumulated and constituting the trust fund of the Fourth Class, there shall be a ratable distribution of said fund among the members of the Fourth Class, who were in good standing on January 1, 1911, and the basis of said distribution shall be the amount of insurance carried, the length of time during which it was carried and the monthly contribution therefor.

And your orators further pray, that the costs of these proceedings be taxed against the Supreme Lodge of the Knights of Pythias, and the administration of the receiver and the costs incident thereto be taxed against the fund sought to be distributed herein.

And your orators further pray, that the interlocutory receiver or receivers of the trust fund of the Fourth Class be continued until the final decree is entered herein; that the defendants be required to answer all and singular the matters above stated; that a writ of subpoena may be granted to your orators to be directed to the defendant The Supreme Lodge of the Knights of Pythias, and to the Board of Control of the Insurance Department thereof, thereby requiring the defendant to appear on a certain day before the Court,

and then and there full, true, direct and perfect answer make to all and singular the premises, but not under oath, which is hereby waived, and further to perform and abide by such further order,

112 direction or decree therefor, as to the Court shall see meet. That your orators have such further and other relief as the Court may deem proper and equitable. Lazarus, Michel & Lazarus, Miller & Dowling, Solicitors for Complainants.

STATE OF INDIANA,  
*County of Marion, ss:*

Before me, the undersigned authority, personally came and appeared Eldon S. Lazarus, who, being duly sworn, deposes and says that he is one of the attorneys of the complainants in the foregoing bill, all of which complainants reside out of the State of Indiana. That he has read the foregoing Bill of Complaint, and that all the facts recited therein are, to the best of his information and belief true and correct, and that the relief therein sought is necessary to protect the rights of the complainants in the premises. Eldon S. Lazarus.

Sworn to and subscribed before me this 25th day of January, 1911. Noble C. Butler, Clerk.

32

And afterwards, to-wit: at the November Term of said Court, on the 16th day of March, 1911, in Recess, the following further proceedings in the above entitled cause were had, to-wit:

Comes now the defendant by James P. Goodrich, Esq., and Messrs. Miller, Shirley, Miller and Thompson, its solicitors and files its answer to the Bill of Complaint, herein, in the words following to-wit:

33

### THE ANSWER OF THE DEFENDANT TO THE BILL OF COMPLAINT.

113 The defendant, the Supreme Lodge Knights of Pythias, now and at all times hereafter saving to itself all and all manner of benefit of exception or otherwise that can or may be had or taken to the many errors, uncertainties and imperfections in the said bill contained, for answer thereto or to so much thereof as this defendant is advised is material or necessary for him to make answer to, answering says:

#### I.

Said defendant admits that each of the complainants named in said bill of complaint is a citizen and resident of the State of Louisiana, and further admits that said defendant is a corporation



## 34

created and existing under an act of Congress of the United States approved June 29th, 1894, and that said corporation has its offices and principal place of business in the City of Indianapolis, in the State of Indiana.

That said corporation was organized as a fraternal and benevolent association, and that under its grant it established for the protection of its members and operated incidentally to its fraternal and benevolent purposes an insurance department known originally as the Endowment Rank, established for the purpose of providing indemnity for the beneficiaries of its deceased members, the membership of such Insurance Department being restricted to members of said Order who had attained the rank of Knight, and were in good standing in a subordinate lodge, but identification with said Endowment Rank was not compulsory with any member of the order, and that the jurisdiction of said Supreme Lodge Knights of Pythias is, by the act of Congress under which it was created, co-extensive with the territorial limits of the United States.

That said Supreme Lodge Knights of Pythias has established throughout the United States Grand Lodges in the several states and territories, and under the authority conferred the said grand lodges have organized subordinate lodges which are responsible to the grand lodges of the state or territory under which they are chartered, all of said grand lodges being subject to the control of the said Supreme Lodge Knights of Pythias.

Said defendant further admits that it established in the State of Louisiana a grand lodge and that said grand lodge has, in furtherance of its grant from said defendant, established subordinate lodges; that individuals having the requisite qualifications are entitled to admission to subordinate lodges as Knights of Pythias for fraternal and benevolent purposes, and that said complainants named in said complaint have been and are, as said defendant is informed and believes, members in good standing of the Order of Knights of Pythias established in said State of Louisiana.

Said defendant further admits that in furtherance of the objects

## 35

and purposes of said organization it established a system of insurance for the protection of its members and their beneficiaries who desired to take advantage of the protection offered in said Insurance Department, and that the basis upon which said Insurance Department was primarily organized was an assessment levied upon members of the said Insurance Department to meet the obligations incurred by said defendant upon policies of insurance issued by it; and that in the primary organization of the Insurance Department there were formed from time to time by said defendant different classes of membership to which said assessment basis was applied for the purpose of meeting the obligations accruing upon the death of any member of either class.



## II.

Said defendants further admit that after the operation of the assessment system for a number of years the said defendant realized that the insurance on the lives of members based on the assessment plan was not practical, and that finally it would result in leaving a number of the members belonging to said respective classes unprovided for owing to the depletion by death of the members thereof.

115 That thereupon said defendant with a view to the ultimate protection of its obligations under the policies which it issued upon the lives of said members organized a Fourth Class to which the members of Classes One, Two and Three were from time to time transferred, but said defendant avers that such transfers were made entirely optional with the members of said Classes, and that there still remain of said First and Second Classes four members each who have not availed themselves of their option to transfer.

## III.

Said defendant further admits that in the establishment of said Fourth Class it abandoned said assessment system and established as a basis for the protection of its members a fixed premium or flat rate based upon the age of members joining said Fourth Class, adopting as said rate that formulated by the National Fraternal Congress; but

## 36

said defendant denies that the rate so fixed was ever made irrevocable, and denies that the same was based upon an established and accepted table of mortality; but avers that the rate so fixed was grossly inadequate for the protection of the members of said department and much less than the cost of maintaining a mortuary fund sufficient to meet the death losses actually sustained, and wholly insufficient to meet the expenses of administering said Insurance Department.

Defendant further admits that under its constitution establishing the Fourth Class of said Insurance Department it was provided that the endowment fund for the payment of benefits in said Class should be derived from monthly payments of each member, said payments to be for each One Thousand Dollars (\$1,000) of insurance and to be graded according to the age of each member at the time of making application and his expectancy of life, his age being taken as of his nearest birthday. That so much of said monthly payments as should equal the cost of such insurance should constitute the

116 endowment fund, and that the residue of said monthly payments should be placed in a reserve fund, such payments to continue as long as the membership of any such applicant should continue.

Said defendant further admits that under the provision of said law or constitution a table of rates was established, based upon age, and it was determined what proportion of the rates paid for insur-

ance should be apportioned to the endowment fund and what portion should be dedicated to said reserve fund, together with the monthly dues paid by the members.

## IV.

Said defendant further admits that by the constitution and laws of said Order it was further provided that said reserve fund, consisting of said membership fees and parts of monthly payments provided for in Section 5 of Article 5 of said constitution of said Endowment Rank (now Insurance Department) should be in the keeping

## 37

of the Supreme Master of Exchequer, and that so much thereof as should not be needed for expenses should be invested by him under the superintendence of the Board of Control, but said defendant denies that said constitution required or provided for the maintenance of a separate expense fund for said Fourth Class, and denies that it excluded the right of said Insurance Department to appropriate and pay out of said expense fund the legitimate charges and expenses of the other Classes of said Department.

## V.

Said defendant further admits that the object and purpose of said constitutional provision establishing a fixed rate were, as stated by said defendant, to secure uniformity of the burdens and benefits of said Department, and that the mortuary fund created was for the protection of the members of said Fourth Class; but said defendant denies that it was ever irrevocably agreed or provided by the constitution of said defendants or its Insurance Department that said rate then adopted should forever remain unchanged or that no member should ever be required to pay an increased assessment; but on the contrary said defendant avers that by the charter or act of Congress under which said defendant was created and by the general statutes, by-laws and regulations of said defendant, and by reason of its strictly mutual and beneficial nature and character and also under the terms of its contracts of insurance or certificates of membership of said Insurance Department, issued to all its members including the complainants, said defendant had reserved at all times the right to enact all reasonable and necessary rules and regulations including all reasonable and necessary modifications of its insurance rates in order to carry out the purpose of its being and enable it to meet the mutual obligations of said society to its members and the obligations of said members to each other, each of said members being, under the plan and purpose of said de-

## 38

endant's organization and under the laws governing the same, an insurer as well as an assured.

## VI.

Said defendant further admits that said complainants named in said bill of complaint availed themselves of the benefits of said Insurance Department, and that they have, since admitted to membership therein, regularly and continuously paid to said defendant through the respective subordinate sections thereof the premiums due upon policies of insurance issued to them as members of said Fourth Class, and that said funds so contributed by said complainants and other members of said Class constituted an endowment fund for the payment of policies of insurance issued to such members in the event of death, less a certain portion of said contributions distributed to said reserve or expense fund out of which all legitimate expenses of said Insurance Department were paid and to which members of all Classes of said Department contributed ratably.

Said defendant further admits that during their membership said complainants have, in accordance with the directions of said defendant and as provided by its constitution and in accordance with the conditions of their respective policies, contributed regularly the respective amounts therein recited and required to be paid, which premiums were payable monthly in advance, except and until the beginning of the present year, and that on January 2nd, 1911, they severally tendered the amount of the respective premiums theretofore collected from them to the authorized representatives of said subordinate sections of which they were members, and that said tenders were, in accordance with defendant's directions, refused; and that each of said complainants protested against defendant's action in refusing to accept payment of the monthly dues so tendered.

But said defendant avers that prior to the 1st day of January 1911, the rates theretofore collected from the members of said Fourth

## 39

Class, including said complainants, were, by the action of said defendant at its biennial session for the year 1910, duly and legally advanced in accordance with the authority conferred upon it by its charter and the laws to which it was subject, and that each of said complainants declined and refused to pay the sums respectively due from them under said table of rates so fixed and established at said 1910 biennial session.

Said defendant avers that there was in force on and prior to January 1st, 1911, and at all times since said defendant was organized, a law and regulation of said society in substance to the effect that each member of said Insurance Department should be and was bound to conform to and comply with all laws and regulations passed by said Supreme Lodge Knights of Pythias touching said Insurance Department, failing in which any such member should forfeit his membership in said department and all rights and benefit in and to the funds of said Insurance Department created and maintained for the protection of its membership; and that each

of said complainants agreed, when their respective policies of insurance were issued to them, to submit to and be bound by said existing laws of said organization or any modifications and amendments thereof.

And said defendant avers that by failing and refusing to pay the advanced rate so established at its biennial session in 1910 as they were required to do, and by failing and refusing to tender such advanced rate which was then the legally established rate applicable to each of such members, said complainants and each of them ceased to be members of said Insurance Department and ceased to have any claim upon or interest in any fund or property thereof.

## VII.

Said defendant admits that said Fourth Class, to which complainants belonged, was organized by said defendant in 1884; and that

## 40

its membership on December 31st, 1906, had reached a total of eighty-one thousand, nine hundred nineteen (81,919); but said defendant denies that at that time there was no other Class of insurance in said Endowment Rank (now Insurance Department) other than said Fourth Class, and denies that said First, Second and Third Classes had been eliminated, but avers that the membership of said First, Second and Third Classes had become and was rapidly depleted after the formation of said Fourth Class by voluntary transfers to said Fourth Class by abandonment or forfeiture under said earlier Classes or by the death of the members thereof.

## VIII.

Said defendant admits that in 1903 the total liabilities under its contracts of insurance outstanding amounted to One Hundred Twenty-five Million, Four Hundred Fifty-five Thousand Dollars (\$125,455,000.00); and that the total funds belonging to said Department then amounted to One Million, One Hundred Eighty-nine Thousand, Two Hundred Seventy-seven and 53/100 Dollars (\$1,189,277.35); but said defendant denies that said last mentioned fund belonging to or was created for the exclusive benefit of said Fourth Class, but avers that included therein was the expense fund created by contributions from all Classes ratably and maintained for the purpose of paying the expenses of said entire Department.

Said defendant admits that the membership of said Fourth Class was, at that time, advancing in years, and that the mortality of said Class was necessarily increasing and ultimately threatening the destruction of said Insurance Department (formerly Endowment Rank), owing to the inability of said defendant to meet the obligations it had assumed under the policies of insurance which it had issued, unless the rates then charged and collected for such insurance should be materially increased; that realizing its perilous con-

41

dition and its inability to discharge its obligations (without such increase in rates) and in consequence thereof, the ultimate dismemberment and dissolution of said Insurance Department, (and possibly the destruction of said defendant as a fraternal and benevolent organization), said defendant called to its assistance men skilled in actuarial science in life insurance to formulate a plan by which defendant could meet the obligations it had assumed toward the membership of its Insurance Department and place the same upon a basis which would enable it in future to carry out its contracts.

121 But said defendant denies that it at any time sought to "relieve" itself of such obligations in the sense of seeking to violate or repudiate the same.

Defendant further admits that it adopted a plan outlined and suggested by experienced actuaries, the basis of which plan is what is known generally as "the flat rate premium" for insurance, based upon rates exacted by old line life insurance companies, and that the result of the adoption of said plan was to increase the premium rates of Fourth Class members and base the same upon the then age of said members, and that it was defendant's purpose to provide for the transfer of Fourth Class members to what is known as the Fifth Class, created at that time, such transfer, however, being entirely subject to the election of said Fourth Class members respectively.

Said defendant denies that in adopting said plan said defendant intended to or did violate any law of its organization or any contract existing between it and complainants and the other members of said Fourth Class and denies that it thereby violated any of the rights of said complainants or any duty owing by it to said complainants or any of them; but avers that in establishing said advanced rates said defendant adopted the only course possible for the preservation and protection of said complainants and their respective rights as members of said Fourth Class, and further avers that if said advance had not been made and said Fifth Class created and transfers made from said Fourth Class to said Fifth Class in large numbers

42

the mortuary fund of said Fourth Class would long ago have been entirely exhausted and said Fourth Class members left without any protection whatever but wholly insolvent and permanently wrecked.

122

IX

Said defendant denies that at its biennial meeting in 1908 or at any other time it has sought to divorce its Insurance Department from the benevolent and fraternal institutions of its organization and make said Insurance Department independent thereof, and said defendant admits that said Supreme Lodge has at all times and under all circumstances declared its purpose to be to protect all and singly the rights of its members and the mutual obligations of such members to each other to the utmost of its ability; but denies that

ever undertook to accomplish such protection regardless of the extent of its death losses compared with its receipts from all sources and avers that said defendant has no possible resources and never did have any resources from which it could meet its obligations other than the receipts from its respective members, and further avers that its ability to pay the respective amounts stated in its various outstanding policies of insurance as they mature depends and always has depended solely upon collecting from its members ratably a sum sufficient in the aggregate to pay all death losses as they mature, together with the reasonable expense of administering said Department.

Said defendant further avers that in the very nature of its Insurance Department, including said Fourth Class, any agreement made by said defendant to pay any sum to the beneficiaries of any member upon his death necessarily involves and includes and always has included an obligation on the part of every surviving member of said Class to contribute such sums from time to time as would enable said defendant to pay such death losses, together with the expenses of administration, and that said defendant has no other

## 43

function or duty with respect to said Insurance Department than to act as the medium or agency through which the various members of said respective Classes of said Insurance Department are enabled to perform their mutual obligations to each other to maintain by contributions from time to time a fund sufficient to meet any and all death claims properly chargeable thereto.

And said defendant avers that at no time has any rate been established or assessment, dues or other charges collected or demanded from the members of any Class in excess of the amount actually necessary to meet the obligations mutually undertaken by the members of said Class to each other to pay the expenses of administration as hereinbefore stated.

## X.

Said defendant admits that after formulating a plan for the establishment of said Fifth Class it directed the issuance of notices to members of said Fourth Class, advising them that it was impossible to continue the Fourth Class as established without increasing the rates of insurance then in force and advising said Fourth Class members to transfer their membership to said Fifth Class; and said defendant admits that in transferring to said Fifth Class the members of said Fourth Class were required to exchange the policies of insurance then held by them and accept in lieu thereof policies or certificates of membership executed by said Insurance Department to them as members of said Fifth Class, carrying a larger rate of insurance than that then applicable to said Fourth Class members; that said policies or certificates of membership in said Fifth Class were made subject to contest within three years from the date thereof, and that a formal proposition described as Exhibit A in complainant's

bill was issued by said defendant to the various members of said Fourth Class; but said defendant denies that it thereby or therein repudiated or announced its purpose to violate any agreement or

44

obligation whatever which it had previously undertaken or assumed with or to the members of said Fourth Class; and said defendant denies that it has ever attempted to destroy the rights of said complainants under their said policies of insurance or to deprive them of any right to participate in the endowment, reserve and trust funds contributed by them or those similarly situated, and denies that any of its plans, if carried into effect, would be destructive of said complainant's rights to participate in said trust funds which they had created; and avers that it is and always has been the purpose of said defendant and of its Insurance Department to administer any and all trust funds controlled by it for the benefit of its members and particularly for the benefit of those whose contributions created said funds; save and except that as to all members of said Fourth Class transferring to said Fifth Class they were each and all respectively advised that in so doing they surrendered and relinquished their interest in the mortuary fund of said Fourth Class but did not surrender their interest in the common expense fund created by the joint contributions of members of all Classes and maintained for the purpose of meeting the expense of administering said entire Insurance Department.

That each and every member of said Fourth Class transferring to said Fifth Class voluntarily yielded and surrendered to the remaining members of said Fourth Class all interest of said transferring members in the mortuary fund of said Fourth Class in order to secure the better protection afforded to the members of said Fifth Class by the advanced rate agreed to be paid by the members thereof, and that in surrendering their said interest in said Fourth Class mortuary fund and transferring to said Fifth Class the financial condition of said Fourth Class was vastly improved instead of being impaired and reduced, as alleged in said bill of complaint, and the per capita interest of those who remained in said Fourth Class in said mortuary fund was enormously increased over what it was and would

45

have been, if said transfers had not been affected.

125 And said defendant denies that the death losses were larger in proportion to the amount of said Fourth Class Mortuary fund available for the payment thereof than they would have been, if said plan of transferring members to said Fifth Class had not been devised and carried out, but avers that on the contrary the death losses paid out of said Fifth Class mortuary fund to the beneficiaries of members who transferred from said Fourth Class to said Fifth Class have been vastly greater than the total amount that said Fourth Class mortuary fund would have been able to meet, if said transferring members had died as members of said Fourth Class.



## XI.

Said defendant avers that since 1906 the membership of said Fourth Class has been reduced from eighty-one thousand, eight hundred and nineteen (81,819) to much less than ten thousand eight hundred thirty-two (10,832), as alleged in said bill of complaint, the present membership of said Fourth Class being approximately two thousand three hundred (2,300); and denies that it has ever furthered the interest of said Fifth Class to the prejudice of complainants and those similarly situated, but it admits that at the time its last official report was filed the membership of said Fourth Class was approximately ten thousand eight hundred thirty-two (10,832) and that the insurance then carried by them amounted to Twenty Million, Six Hundred Sixty-seven Thousand, Five Hundred Dollars (\$20,667,500.00).

Said defendant denies that there is or was any fund on the 31st day of October, 1910, known as the "endowment or reserve fund" belonging to said Fourth Class then amounted approximately to Six Hundred Fifteen Thousand Five Hundred Sixty-eight and 49/100 Dollars (\$615,568.49), and that in addition thereto there existed a general expense fund, created by contributions from all members

## 46

of said Insurance Department and applicable to the payment of expense of administering said entire Department.

126 Said defendant further admits that said mortuary fund of said Fourth Class was grossly inadequate at said time to provide for the future death losses likely to accrue against the same except and unless the rates of insurance then paid by the members of said Fourth Class should be largely increased and the transfer of members from said Fourth Class and the voluntary surrender of members so transferring of their interest in said Fourth Class mortuary fund should so far relieve the same of liabilities for death losses and reduce the membership of said Fourth Class as to enormously increase the per capita interest of said Fourth Class members remaining in said Fourth Class mortuary fund.

Said defendant further avers that the transfer of members from said Fourth Class to said Fifth Class has greatly increased such per capita interest and has thereby greatly strengthened said mortuary fund in proportion to its liabilities, but that it still was inadequate to protect said members remaining in said Fourth Class without increasing their rates of insurance then in force; but that to render said Fourth Class mortuary fund solvent and adequate to meet all future death losses as they matured it became and was necessary to and said defendant did increase the rates of insurance of the members of said Class, which increased rate became effective January 1st, 1911, since which time said Fourth Class has become and is able, if the members thereof continue to pay said increased rate, to meet not only the present but all other losses of liabilities as they shall accrue.

## XII.

Said defendant admits that through its Supreme Chancellor an open letter has been addressed to the members of said Fourth Class stating in substance that the receipts of the mortuary fund for 1908 amounted to One Million, one hundred seventy-three Thousand

## 47

127 Sixty-six and 38/100 Dollars (\$1,173,066.38), and that the disbursements exceeded such receipts in the sum of Two Hundred Twenty-eight Thousand Seven Hundred Twenty-four and 24/100 Dollars (\$228,724.24); that in 1909 the losses occurring in the Fourth Class amounted to Nine Hundred Ninety Thousand Five Hundred Dollars (\$990,500.00) and that the total mortuary receipts of said Fourth Class were only Six Hundred Thirty-eight Thousand Eight Hundred Eight-five and 63/100 Dollars (\$638,885.63); that the total disbursements in the Fourth Class amounted to One Million Forty Thousand Four Hundred Eighty-four and 7/100 Dollars (\$1,040,484.07), an excess over receipts of Four Hundred One Thousand, Five Hundred Ninety-eight and 44/100 Dollars (\$401,598.44), that the mortuary receipts for the Fourth Class for the first six months of 1910 amounted to Two Hundred Eighty-nine Thousand Five Hundred Nineteen and 6/100 Dollars (\$289,519.06) and that the disbursements for said six months' period amounted to Four Hundred Thirty-nine Thousand Three Hundred Fifty-six Dollars (\$439,356.00), making an excess of disbursements over receipts for said period of One Hundred Forty-nine Thousand Eight Hundred Forty-five and 94/100 Dollars (\$149,845.94), notwithstanding the fact that three special assessments of double the amount ordinarily paid had been levied. That the excess disbursements from the receipts for the years 1908, 1909, and the first six months of 1910 amounted to Seven Hundred Eighty Thousand One Hundred Sixty-eight and 62/100 Dollars (\$780,168.62) and that if special assessments had not been levied during said period the disbursements would have exceeded the receipts by at least One Million Dollars (\$1,000,000). That the membership of said Fourth Class on October 31st, 1910, amounted to ten thousand eight hundred thirty two (10,832) in number, carrying insurance of Twenty Million Six Hundred Sixty-seven Thousand Five Hundred Dollars (\$20,667,500) and that the amount in the mortuary fund 128 of the Fourth Class on October 31st, 1910, was Six Hundred Fifteen Thousand Five Hundred Sixty-eight and 49/100 Dollars (\$615,568.49) whereas upon the basis of the insurance carried

## 48

by the members of the Fourth Class based upon their respective ages as figured by the actuary appointed by said defendant to formulate a plan for safe insurance, as aforesaid, said mortuary fund should have been upwards of Seven Million Dollars (\$7,000,000.00).

Said defendant further avers that each and every statement made in said open letter was true, and that if it had not been for the creation of said Fifth Class and the reduction in membership of said Fourth Class since October 31st, 1910, by transfer, death and forfeiture, together with an increase of insurance rates applicable to said Fourth Class, effective January 1st, 1911, said Fourth Class mortuary fund would already be entirely exhausted, as well as all other resources of said Fourth Class, and complainants, together with all other members of said Fourth Class, would have been left absolutely without any protection whatever.

Said defendant admits that, as shown by its reports, the membership composing said Fourth Class on December 31st, 1909, (not September 1st, 1909, as alleged in said bill of complaint) embraced Sixty-six (66) members over the age of eighty (80) years, carrying insurance amounting to One Hundred Twenty-four Thousand Dollars (\$124,000.00); three hundred sixty-one (361) members over the age of seventy-five (75) years carrying insurance to the amount of Seven Hundred Sixty-four Thousand Dollars (\$764,000.00); and twenty-two hundred eighty-one (2,281) members (instead of twenty-six hundred seventy-three members, as alleged in said bill of complaint) over the age of sixty-five (65) years, carrying insurance to the amount of Four Million, Nine Hundred Sixty-two Thousand  
 129 sand Five Hundred Dollars (\$4,962,500), (instead of Five Million Seven Hundred Ninety-seven Thousand Five Hundred Dollars (\$5,797,500.00) as alleged in said bill of complaint); that those members of the Fourth Class whose ages are below sixty-five years have, upon the basis of said actuary's statistics, reached the average time upon which insurance rates are calculated, and in consequence thereof the mortality of said Fourth Class must be neces-

49

sarily increased, calling, as it does, for a reserve ten times larger than that then held by said defendant to meet the demands of said Fourth Class membership.

Said defendant avers that each and all of said statements so contained in said letter or announcement were absolutely true as established by the best known insurance statistics.

### XIII.

Said defendant denies that the immediately maturing obligations of said Fourth Class will in all probability absorb the resources of said Fourth Class, and denies that complainants have any right to an accounting or distribution of said fund, but aver that by the general statutes and laws of said defendant governing said Insurance Department no member has any divisible interest whatever in said fund or any part thereof.

### XIV.

Said defendant admits that in the establishment of said Endowment Rank (now Insurance Department) and of the Fourth Class

thereunder it created a Board of Control charged with the administration and protection of all the funds of said Endowment Rank, but denies that it has been grossly negligent or negligent in any degree in the performance of its duty (except as hereinafter stated) but admits that at one time prior to 1901 certain funds of said Department were misappropriated by the then officers of said Insurance Department, entailing heavy losses to the funds to said Fourth Class, the exact amount of which losses it was impossible to ascertain; and admits that auditors who examined the books of said

130 department reported that they were unable to state how much money had been so misappropriated.

Said defendants further admit that the losses so sustained were made good by voluntary contributions from the members of said Insurance Department, and admit that plans were formulated

## 50

by said defendant to organize said Fifth Class and the members of said Fourth Class advised to transfer to said Fifth Class; and that pursuant to such advice so given more than seventy thousand (70,000) members of said Fourth Class who were under fifty (50) years of age transferred to said Fifth Class, but said defendant denies that if said transferring members had remained members of said Fourth Class they would or could have maintained a reserve or mortuary fund sufficiently large, if honestly and judiciously administered, to protect the members of said Fourth Class, and denies that the acts of those in control of said Department impaired the reserve and trust fund applicable to the protection of said Fourth Class membership, but avers the contrary to be true, as hereinbefore specifically set forth.

Said defendant denies that the misappropriation of funds occurring prior to 1901 amounted to Five Hundred Thousand Dollars (\$500,000.00) as alleged in said bill of complaint, but avers that the amount so misappropriated approximated Four Hundred Thousand Dollars (\$400,000.00).

Said defendant further admits that it recovered from its officers so defaulting a sum substantially equal to said defalcation with interest, but denies that it has withheld any part thereof from the funds to which the same belonged and avers the fact to be that all sums so recovered were returned to the proper funds from which they were abstracted as far as ascertainable.

## XV.

Said defendant denies that its Board of Control has abstracted and used from said Fourth Class fund the sum of Three Hundred Ninety-four Thousand Eighty-two and 25/100 Dollars (\$394,082.25)

131 or any other sum in advancing and developing any new scheme of insurance organized by said defendant or for any other purpose, and admits that it has declined and refused to turn,

## 51

over to said Fourth Class said sum so alleged by said complainants to have been abstracted, and denies that the Fifth Class of said In-

Insurance Department has received the benefit of said sum or any sum so derived or abstracted.

### XVI.

Said defendant admits that there are no new members being received into said Fourth Class, and that no efforts are being made to increase the membership thereof, but denies that no effort is being made to increase the funds available for the benefit of said Fourth Class members, but on the contrary avers that defendant has earnestly attempted to increase and enlarge said Fourth Class funds by increasing the rates of insurance of the membership thereof in order to meet the losses accruing to said funds as hereinbefore stated.

Defendant denies that as at present administered said Fourth Class fund is inadequate to meet the losses and charges accruing thereto at the present effective rates applicable to said Fourth Class membership, but admits that said fund would have been inadequate to meet said charges, if said rates had not been increased as aforesaid and said fund replenished from time to time by said increased premiums paid by the members of said Class.

Said defendant denies that said Fourth Class is insolvent.

### XVII.

Said defendant denies that there is any fund known as the "endowment and trust fund" of said Fourth Class, but avers that there is a fund known as the "mortuary fund" of said Fourth Class, which is independent of said Fifth Class and should be and is treated as a separate and distinct fund, and that all of the moneys, bonds, mort-

52

gages, notes, credits, securities and properties of every kind  
132 composing the mortuary fund of said Fourth Class belong to said Fourth Class and should be used exclusively for the benefit of the members thereof.

Said defendant denies that there is any other fund belonging exclusively to said Fourth Class and denies that by the action of said Board of Control and by the alleged defalcations and abstractions referred to in said bill of complaint the funds of said Fourth Class have become impaired.

### XVII.

Said defendant admits that each of the respective complainants named in said bill of complaint is the holder of a policy of insurance as described in said bill, and that each of said complainants has contributed from time to time up to January 1st, 1911, the respective sums alleged to have been contributed to said Insurance Department.

### XVIII.

Said defendant denies that by the acts complained of or by any other action on its part, or of its Insurance Department, or the officers

thereof, the members of said Fourth Class or any of them are deprived of the protection vouchsafed to them by their contracts of insurance, and denies that any action so taken has been confiscatory or in violation of the contract obligations of said defendant, and denies that any action has resulted in the dismemberment of said Fourth Class members, and denies that said plan of transfer from said Fourth Class to said Fifth Class was designed to destroy or injure the members of said Fourth Class who declined to transfer, but on the contrary avers that said plan was adopted for the purpose of protecting and benefiting all the members of said class, including

53

those who transferred, and those who declined to avail themselves of said opportunity to transfer; and further avers that the result of such plan, since the same was put in operation, had been to greatly benefit all the members of said Class.

133 Said defendant denies that it had any intention of seizing upon or diverting from their legitimate purposes any of the funds of said Fourth Class, or appropriating the same to the benefit of the members of said Fifth Class.

Said defendant admits that the Mortuary Fund of said Fourth Class is a trust fund for the benefit of those who remain as members of said Fourth Class, but denies that it belonged exclusively to those who were members of said Fourth Class on the 1st day of January, 1911, averring the fact to be that since said last mentioned date the membership of said Fourth Class at that time has been greatly depleted by death, transfer and forfeiture, and that only those who continue in good standing as members of said class until death are entitled to participate through their beneficiaries in said Fourth Class Fund, and deny that any of said members of said Fourth Class now have, or ever had any divisible interest in said Mortuary Fund.

## XIX.

Said defendant admits that any number of suits have been instituted in various sections of the United States against defendants growing out of the conditions that have arisen with reference to the funds of said Fourth Class; said defendant denies that the assets of said Fourth Class have been or are required to be seriously impaired or interfered with by reason of said suits, several of which have been adjusted, or are in process of adjustment at comparatively nominal cost.

Said defendant avers that the appointment of a Receiver for said Fourth Class assets, or for said insurance department, would

54

needlessly impair its credit by destroying confidence in the regular membership of said department, which, because of the peculiar and strictly mutual character and nature thereof depends entirely for its prosperity and success upon the continued confidence of its members in said defendant, and in each other.

134 That if a Receiver is appointed receipts not only of said Fourth Class, but said Insurance Department generally, will be immediately, in great part suspended, and great and unnecessary loss entailed upon the membership of said defendant.

## XX.

Said defendant further avers that said Supreme Lodge Knights of Pythias is a fraternal beneficial society, and that the same was organized and its affairs, including said Insurance Department, have always been managed and conducted for the sole benefit of its members and their beneficiaries and not for profit.

That among its beneficial purposes is one under which provision for the payment of benefits is made upon the death of its insured members, such payment, however, in all cases being subject to the members' compliance with the laws of said defendant; that all of said benefits as well as all expenses of said defendant are defrayed and always have been defrayed from funds derived from dues and assessments collected from its members; and that its benefits are paid upon the death of its members, and can, under its laws only be paid to the families, heirs, blood relatives, affianced wife or dependents of such deceased member.

That the membership of said society now aggregates more than seven hundred thousand persons, all of whom are members of subordinate lodges, which, in the aggregate, exceed seven thousand in number; that by vote of all the members in the subordinate lodges representatives from their number are elected to the grand

## 55

lodges of said defendant society, which grand lodges aggregate in number more than Fifty; that each subordinate lodge is entitled to one representative to the grand lodge, and that each grand lodge is entitled to elect and does elect from its membership at least two representatives to said Supreme Lodge Knights of Pythias. That among the charter powers of said defendant is one of the following tenor and effect:

135 "That the said Supreme Lodge shall have power to establish the Uniform Rank and the Endowment Rank upon such terms and conditions and governed by such rules and regulations as to the Supreme Lodge may seem proper."

Said defendant further avers that under said charter, and by reason of the nature and character of said defendant it possesses, and always has possessed and exercised full power to make, alter and change from time to time, as occasion required, such laws, rules and regulations as it deemed proper and necessary for carrying on its business affairs; and that it has always had and exercised from time to time the power to make the same applicable to all of its members in order to insure perfect mutuality of interest among them.



That acting under its powers so existing, said defendant has, since the organization of said Endowment Rank (now Insurance Department), required all members to agree in writing when applying for membership to said Insurance Department to be bound and controlled by the laws of said society then in force and such as might thereafter be enacted for the government of the members of said Department and to further agree that their respective insurance contracts shall be controlled by the laws in force when the same were issued and by such laws as might thereafter be enacted, and such regulations as might thereafter from time to time be adopted by the properly constituted authorities of said Insurance Department or by said Supreme Lodge Knights of Pythias; and that the certificates of membership in said Insurance Department issued to and held by each of said complainants named in

## 56

said bill of complaint, and all other members of said Insurance Department contains upon its face an express provision in substance and to the effect that the holder thereof, by accepting the same, agrees to be bound by such laws and regulations touching the government of said Insurance Department as may thereafter be adopted, and that his said contract of insurance should be subject thereto; all of which will hereafter be made to more fully appear by the introduction in evidence of said respective policies of insurance.

136 Defendant further avers that by the rules, regulations and statutes in force on and prior to July 1, 1892, it was the duty of the Board of Control of said Insurance Department to report to said Supreme Lodge Knights of Pythias at its biennial session the conditions of all funds belonging to said Department, and the manner, plan and method under which the same were managed and controlled; that at said biennial session for 1892 said Board of Control, as required by law, did report in detail the condition of said funds showing in said report that a single expense fund only was maintained created from contributions of the members of the three classes then in existence, and that out of said fund all of the expenses of said department were paid; that said reports of said Board of Control to each biennial session of said defendant Supreme Lodge Knights of Pythias, thereafter until 1906, each showed the maintenance of a single expense fund so made up and administered.

That in 1906 said Fifth Class was created, and that ever since that time reports have been regularly made showing the maintenance of a single expense fund created by contributions from the members of all classes, including said Fifth Class, and that said *respec-* reports of said Board of Control were each and all approved, and the method of administering said expense fund occurred in by said several consecutive biennial sessions.

## 57

That thereafter, to-wit, on the 22nd day of January, 1900, the Board of Control of said Endowment Rank had enacted and adopted a certain resolution touching the funds of said Endowment Rank whereby among other things it was provided as follows:

"Resolved, that from and after December 31, 1899, the Endowment Rank shall be divided into two separate and distinct funds to be known as Mortuary and Expense Funds, etc."

with resolution was printed in the published edition of the Constitution governing the said Endowment Rank in November, 1900, and that said constitution was immediately thereafter promulgated and distributed among the members of said department, and the provisions of said resolution made known to all the members thereof.

That thereafter there was adopted at a session of said Supreme Lodge Knights of Pythias held in 1901 a section of the Supreme Statutes of said order (then section 363) as follows:

"The amounts received under the above table shall be divided into two separate and distinct funds to be known as the Mortuary and Expense Funds, ninety per cent from the receipts of assessment from the above table shall be known as a mortuary fund, and ten per cent of the receipts from the assessments under said table shall be paid into and shall be the expense fund.

That at the time said section of said Supreme Statutes was adopted there was only one expense fund in existence; which fund was made up, as aforesaid, from contributions of all members of said Insurance Department; and that at no time since said date has said defendant maintained other than a single expense fund out of which all expenses of said department have been paid, and without any distribution or apportionment of such expense among said several classes.

That at the biennial convention of said Supreme Lodge Knights of Pythias held in New Orleans, Louisiana, in October, 1906, said section was by resolution of said convention reaffirmed and interpreted to mean that 10% of said receipts net should be retained

## 58

as a part of said expense fund, and that an additional 5% should be deducted from said receipts as a commissison for the agent procuring said insurance.

That at said 1906 biennial session there was adopted a section of the Supreme Statute known as Section 393 as follows:

"For the purpose of effecting the orderly conduct of the business of the insurance department of this society, there is hereby created a board of trustees, to be known as the "Board of Control," which Board shall have full charge and complete control of the business and affairs of the insurance department, subject at all times and in

all things to the direction of, and to account and report to, the Supreme Lodge Knights of Pythias."

138 Said defendant avers that all of the proceedings of said respective biennial sessions of said Supreme Lodge were promulgated shortly after the adjournment of said respective sessions and widely distributed among the membership of said order throughout the United States and foreign countries whereby all of said members, including the said complainants became and were fully advised as to the conditions of said respective funds, and the manner in which they were uniformly administered, including the acts of said defendant and its Insurance Department and officers complained of in said bill of complaint down to and including the biennial session of said Supreme Lodge for 1910.

That during all of said years complainants were members of said order, and with full knowledge of the facts and conditions alleged in said complaint acquiesced therein without protest or objection, and continued to receive and have received during all of said years, the protection provided for by their respective policies of insurance, worth largely more than the amount they were paying for the same during said time according to any known and approved insurance tables.

Said defendant avers that all steps taken and acts done by said insurance department and its officers touching the reorganization of said Insurance Department, the creation of the Fifth Class, and the invitation of said Fourth Class to avail themselves of the opportunity

### 59

to transfer to said Fifth Class afforded by said Insurance Department, and all other acts done by said Insurance Department during the past twenty years pertaining to the affairs of said Insurance Department complained of in said bill of complaint, said defendant and its Insurance Department have been guided solely and singly by a sincere desire to administer the prudential affairs of said society for the interest of all its members, and in strict regard to the rights of said members among themselves; that each and every act complained of during said period pertains to matters of internal administrative and prudential concerns over which, by the laws creating and governing said defendant, its Supreme Lodge, and its Insurance Department acting thereunder, have supreme and exclusive power and control.

139

### XXI.

Said defendant further avers that among the provisions of the Supreme Statutes of said Grand Lodge now, and for many years prior to this date is the following known as Section 509, to-wit:

"No member of the insurance department shall have any divisible interest in the funds or properties of the insurance department, and, except as provided for in these laws with respect to the members of the Fifth Class, there shall be no apportionment of any of said funds

at any time, and then only as provided for in the accounting required to be made in the Fifth Class. Except as it may appear otherwise in the accounting in the Fifth Class, no member of the insurance department shall have any claim whatever, during his lifetime, to any part of the funds or properties of the insurance department, or to have any portion of same applied to the maintenance of his certificate, and then only as these statutes expressly provide respecting the accounting and lapsing of assessments, except further in the case of members of plans "A," "B" and "D" who may be entitled to paid-up or extended insurance in the manner and to the extent in these laws provided."

Said defendant avers that during all the time the acts, of said defendant and its insurance department and officers, are alleged in said

60

bill to have been committed and done, with reference to the relations between said Fourth Class and said Fifth Class, the statute above quoted has been in force and complainants have had full knowledge thereof, and continued until the first day of January, 1911, to pay the sums required of them as members of said department in order to maintain their insurance rights and privileges, and that during said time they received, and each of them received, substantial benefit as members of said department in the form of life insurance, the same being of a large pecuniary value and greatly in excess of the sums continued by them as aforesaid.

That it would, therefore, be inequitable to permit them to disavow and repudiate the action of said defendant and its insurance department in which they have actually participated and through which they have received large benefits, as aforesaid, and thereby deny to the beneficiaries of such members as may hereafter die while in good standing, as members of said insurance department, the indemnity provided for in their respective certificates of insurance.

That said Insurance Department, including said Fourth Class will be amply able if permitted to go forward with its present plan of operating said department as hereinbefore detailed in accordance with the laws and statutes of said order to meet all death losses as they mature and thereby carry out the plans and purposes of said organization; that neither said defendant nor said Insurance Department as a whole, nor said Fourth Class, is insolvent, or was insolvent when said bill of complaint was filed.

And this defendant denies all and all manner of unlawful combinations and confederacy wherewith it is by this said bill charged; without this there is any other matter, cause or thing in said complainant's said bill of complaint contained material or necessary for this defendant to make answer to, and not herein and hereby well and sufficiently answered, confessed, traversed and avoided or denied it true to the knowledge or belief of this defendant, all which matters and things this defendant is ready and willing to aver, maintain and prove as this Honorable Court shall direct; and humbly prays to be

hence dismissed with its reasonable costs and charges in this behalf mostly wrongfully sustained. (Signed) James P. Goodrich, Miller, Shirley, Miller & Thompson, Solicitors for Defendant.

And afterwards, to-wit at the November Term of said court on the 14th day of April, 1911, before the Honorable Albert P. Anderson, one of the judges of said court, the following further proceedings in the above entitled cause were had, to-wit:

Comes now the defendant by James P. Goodrich, Esq., and Messers. Miller, Shirley, Miller and Thompson, its solicitors, 141 and files its petition for leave to file an Amended Answer herein, which petition is now by the Court granted, and said Amended Answer is now filed and is in the words following, to-wit:

62

### AMENDMENT TO ANSWER.

Comes now the defendant in the above entitled cause, the Supreme Lodge Knights of Pythias, and first having obtained leave of Court to amend the answer of said Defendant in said cause files herewith its amendment to said answer, which is to be inserted in lieu of the third paragraph or sub-division of said answer found on pages 4 and 5 thereon, to-wit:

63

### III.

Said defendant further admits that in the establishment of said Fourth Class it fixed as a basis for the protection of its members a flat rate or premium based upon the age of its members joining said Fourth Class, adopting as said rate that formulated by the National Fraternal Congress; but the defendant avers that it still expressly retained the right both in its by-laws and in the certificates of membership issued to each member of said Endowment Rank to levy extra or additional assessments as occasion might require, as in this paragraph hereinafter set out; said defendant denies that the rate so fixed was ever made irrevocable, and denies that the same was based upon an established and accepted table of mortality, but avers that the rate so fixed was grossly inadequate for the protection of the members of said department, and that said rate produced a sum less than the actual cost of maintaining a mortuary fund sufficient to meet the death losses actually sustained and wholly insufficient to meet the expenses of administering said insurance department.

Said defendant further admits that under its constitution establishing the Fourth Class of said Insurance Department it was provided that the Endowment Fund or the payment of benefits 142 in said Class should be derived from monthly payments of each member, said payments to be for each One Thousand (\$1,000) Dollars of insurance, and to be graded according to the age of each member at the time of making application and his ex-

pectancy of life, his age being taken as of his nearest birthday, and such other and additional assessments as might from time to time

## 64

become necessary; that so much of said monthly payments as should equal the cost of such insurance should constitute the Endowment Fund, and that the residue of said monthly payments should be placed in a reserve fund, such payments to continue as long as the membership of any of such applicants should continue.

Said defendant further admits that under the provision of said law or constitution a table of rates was established, based upon the age of the member, and it was determined what proportion of the rates paid for insurance should be apportioned to the Endowment Fund, and what portion should be dedicated to said reserve fund, together with the monthly dues paid by the members.

Defendant avers that these complainants had become members of the Endowment Rank of said Knights of Pythias long prior to the 22nd day of October, 1892; that all persons who became members of said Endowment Rank of said Knights of Pythias prior to said last named date, including these complainants, received certificates of membership in said Endowment Rank and accepted the same, by the terms of which said certificates it was provided, among other things that:

"In consideration of the payment hereafter to said Endowment Rank of all assessments as required and the full compliance with all laws governing this rank now in force, or that may hereafter be enacted,"

the said Supreme Lodge Knights of Pythias would pay to the beneficiary or beneficiaries therein designated the face of said certificate, but that it was moreover provided in each and all of said certificates so issued prior to October 22nd, 1892, as follows:

143 "Provided further that if at the time of the death of said brother the proceeds of one assessment on all members of the Endowment Rank, shall not be sufficient to pay in full the maximum amount of the endowment held under this certificate, then there shall be paid an amount, less than ten per cent. for expenses, equal to the proceeds of one full assessment on all remaining members of the Endowment Rank, and the payment of such sum to the beneficiary or beneficiaries mentioned herein shall be in full of all claims and demands under and by virtue of this certificate."

That while said certificates were issued in said form and contained said provisions the said Knights of Pythias and the Endowment Rank thereof did not incur any obligation to pay any definite or fixed sum to the beneficiaries named therein over and above that which might be realized from such assessments so to be levied.

That thereafter, to-wit: commencing on the 21st day of October, 1892, the form of the certificate of the membership in said Endow-

ment Rank in the order of Knights of Pythias was through by-laws duly adopted by the Supreme Lodge Knights of Pythias and the Board of Control of its Endowment Fund so altered and changed that the said Endowment Rank of said Knights of Pythias, and the said Knights of Pythias did thereafter assume a definite fixed liability with respect to each membership certificate and agreed to pay a fixed sum to the beneficiaries named in said certificate provided the person to whom such certificate of membership was issued should thereafter comply with all the conditions contained in such certificate, and the laws governing said Rank then in force, or that might thereafter be enacted by the Supreme Lodge or the Board of Control of said Rank.

That these complainants were duly represented in the manner herein set out, and averred, in the Supreme Lodge which authorized such change to be made in said certificate of membership, and that these complainants acquiesced in, confirmed, ratified and approved the change in such membership certificate, and as members of said

## 66

144 Endowment rank had full knowledge and notice that many persons were joining said Endowment Rank and receiving said certificates, in and by the terms of which said Supreme Lodge Knights of Pythias agreed to pay to the beneficiaries of said persons certain definite and fixed sums, and that these complainants and the other members of said Endowment Rank who held certificates prior to October 22, 1892, made no objection of any kind or character to the change in said form of certificate, but that each and all of said members, including these complainants, through their chosen representatives, invited, solicited and procured other persons to become members of said Endowment Rank and to take, receive and accept certificates with a definite and fixed sum therein named, and without said certificates granting or giving to the said Supreme Lodge Knights of Pythias the right to pay in lieu of the amount specifically named therein the proceeds of one assessment; that a large number of persons did in fact take, receive and accept the certificates of the form hereinbefore described, issued subsequently to October 22, 1892, and that a large number of persons, to-wit, — persons are now members in good standing of said Fourth Class whose certificates are of said form, and in and by the terms of which the defendant had agreed to pay to the beneficiaries therein named a definite and fixed sum; that said Supreme Lodge by the issuance of said certificates last mentioned and described assumed a definite obligation to pay a fixed sum of money to the beneficiaries named therein; that the rates for said insurance, which were those formulated by the National Fraternal Congress, were and are entirely insufficient to enable the said defendant to meet the obligations assumed by it by the issuance of said certificates; that these complain-

## 67

ants by permitting the said defendant to issue said certificates last mentioned and described, without objection or protest, and by per-



145 mitting a large number of persons to become members of said Insurance Department under said conditions, without making any objection or protest, have estopped themselves to deny the right of said defendant to increase the rates charged for insurance, so that said defendant may meet the obligations so assumed by it. (Signed) James P. Goodrich. (Signed) Miller, Shirley, Miller & Thompson, Solicitors for Defendant.

And afterwards, to-wit: at the November Term of said Court on the 1st day of May, 1911, before the Honorable Albert B. Anderson, one of the judges of said Court, the following further proceedings in the above entitled cause were had, to-wit:

### GENERAL CONTINUANCE.

Ordered by the Court that all complaints and proceedings depending in said Court and not specially continued be, and the same are hereby, continued until the next term of this court.

And afterwards, to-wit: at the May Term of said Court, on the 5th day of May, 1911, before the Honorable Albert B. Anderson, one of the judges of said court, the following further proceedings in the above entitled cause were had, to-wit:

Come now the complainants, by counsel, and file their replication herein, in the words following, to-wit:

68

### REPLICATION.

These replicants, Joseph Holt, Victor Mauberret, Ross Carlin, Frank Ribera, William R. Smith, John B. Chisolm, Henry A. Weber, David Lemley, Edward F. Denechaud, James A. Douglas, Joseph E. Jolet, Moses Heidingsfelder, Thomas Carey, Louis Schreck, Philip Rahm, Joseph I. Barnett, John Leckert, T. Sidney Weber, David R. Graham and Lewis Fishel, saving and reserving to themselves all and all manner of advantages of exception which may be had  
146 and taken to the manifold errors, uncertainties and insufficiencies of the answer of the defendant, the Supreme Lodge, Knights of Pythias, for replication thereunto say that they do and will aver, maintain and prove their said Bill to be true, certain and sufficient in the law to be answered unto by said defendant, and that the answer of said defendant is very uncertain, evasive and insufficient in law to be replied unto by these replicants; without that, that no other matter or thing in the said answer contained, material

69

or effectual in the law to be replied unto and not herein and hereby well and sufficiently replied unto, confessed or avoided, traversed or denied, is true, all of which matters and things these replicants are ready to aver, maintain and prove as this Honorable Court shall so direct, and humbly pray as in and by their said bill they have already prayed. Miller & Dowling, Solicitors. Lazarus, Michel & Lazarus.

And afterwards, to-wit: at the May Term of said Court, on the 6th day of November, 1911, before the Honorable Albert B. Anderson, one of the judges of said court, the following further proceedings in the above entitled cause were had, to-wit:

### GENERAL CONTINUANCE.

Ordered by the Court that all complaints and proceedings depending in said Court and not specially continued be, and the same are hereby continued until the next term of this court.

70

And afterwards, to-wit: at the November Term of the District Court of the United States for the District of Indiana, on the 26th day of February, 1912, in Recess, the following further proceedings in the above entitled cause were had, to-wit:

147 Upon stipulation now filed herein the defendant withdraws its answer now on file, and in lieu thereof and as a substitute therefor, files an amended answer herein in the words following, to-wit:

71

### THE AMENDED ANSWER OF THE DEFENDANT TO THE BILL OF COMPLAINT.

The defendant, the Supreme Lodge Knights of Pythias, now and at all times hereafter saving to itself all and all manner of benefit of exception or otherwise that can or may be had or taken to the many errors, uncertainties and imperfections in the said bill contained, for amended answer thereto or to so much thereof as this defendant is advised it is material or necessary for him to make answer to, answering says:

I.

Said defendant admits that each of the complainants named in

72

said bill of complaint is a citizen and resident of the State of Louisiana, and further admits that said defendant is a corporation created and existing under an act of Congress of the United States approved June 29th, 1894, and that the Insurance Department of said corporation has its offices and principal place of business in the City of Indianapolis in the State of Indiana.

That said corporation was organized as a fraternal and benevolent association, and that under its grant it established for the protection of its members and operated incidentally to its fraternal and benevolent purposes an Insurance Department known originally as the Endowment Rank, established for the purpose of providing indemnity for the beneficiaries of its deceased members, the membership of such Endowment Rank, now Insurance Department, being re-

stricted to members of said order who had attained the rank of Knight, and were in good standing in a subordinate lodge, but identification with said Endowment Rank, now Insurance Department, was and is not compulsory with any member of the order, and that the jurisdiction of said Supreme Lodge Knights of Pythias, is by the act of Congress under which it was created, co-extensive with the territorial limits of the United States.

That said Supreme Lodge Knights of Pythias has established throughout the United States grand lodges in the several states and territories, and under the authority conferred the said grand lodges have organized subordinate lodges which are responsible to the grand lodges of the state or territory under which they are chartered, all of said grand lodges being subject to the control of said Supreme Lodge Knights of Pythias.

Said defendant further admits that it established in the State of Louisiana a grand lodge and that said grand lodge has, in furtherance of its grant from said defendant, established subordinate lodges;

## 73

that individuals having the requisite qualifications are entitled to admission to subordinate lodges as Knights of Pythias for fraternal and benevolent purposes, and that said complainants named in said complaint have been and are, as said defendant is informed and believes, members in good standing of the Order of Knights of Pythias established in said State of Louisiana.

Said defendant further admits that in furtherance of the objects and purposes of said organization it established a system of insurance for the protection of its members and their beneficiaries who desired to take advantage of the protection offered in said Endowment Rank, now Insurance Department, and that the basis upon which said Endowment Rank was primarily organized was an assessment levied upon members of said Endowment Rank to pay the benefit certificates held by deceased members of said rank; and that in the primary organization of the Endowment Rank there were formed from time to time by said defendant different classes of membership to which said assessment basis was applied for the purpose of paying the benefit certificates held by deceased members of either class.

149

## II.

Said defendants further admit that after the operation of the assessment system for a number of years the said defendant realized that the insurance on the lives of members based on the assessment plan was not practical, and that finally it would result in leaving a number of the members belonging to said respective classes unprovided for owing to the depletion by death of the members thereof.

That thereupon said defendant with a view to the ultimate protection of the benefit certificates which had been issued upon the lives of said members organized a Fourth Class to which the mem-

## 74

bers of Classes One, Two and Three were from time to time transferred, but said defendant avers that such transfers were made entirely optional with the members of said Classes, and that there still remain of said First and Second Classes four members each who have not availed themselves of their option to so transfer.

## III.

Said defendant further admits that in the establishment of said Fourth Class it fixed as a basis for the protection of its members a flat graded rate or premium based upon the age of its members joining said Fourth Class, but the defendant avers that it still expressly retained the right both in its by-laws and in the certificates of membership issued to each member of said Endowment Rank to levy extra or additional assessments as occasion might require, as in this paragraph hereinafter set out; said defendant denies that the rate so fixed was ever made irrevocable, and denies that the same was based upon an established and accepted table of mortality, or upon that formulated by the National Fraternal Congress, but avers that the rate so fixed was grossly inadequate for the protection of the members of said department, and that said rate produced a sum less than the actual cost of maintaining a mortuary fund sufficient to meet the death losses actually sustained and wholly insufficient to

150 meet the expenses of administering said Endowment Rank or Insurance Department. Defendant further avers that the rates so fixed upon the establishment of the Fourth Class proved so wholly inadequate that on December 31st, 1901, there was in the Mortuary Fund of said class a deficiency of Thirty-four Thousand Nine Hundred Fifty-one and 6/100 Dollars (\$34,959.06) and that there were on said day outstanding and unpaid death losses of Two Hundred Forty-eight Thousand Five Hundred Dollars (\$248,500) in said Fourth Class and that said class was hopelessly and absolutely insolvent, that in said year 1901, in order to remedy said condition, the Supreme Lodge at its biennial convention revised the rates to be paid by members of said Fourth Class and said Endowment Rank, and put in force what is known as the National Fraternal Congress Table of Rates, except that the members of said Fourth Class and of said Endowment Rank were rated under said table of rates at their ages at their time of entry and not at their attained ages and except that of the amount collected under said table of rates fifteen per cent. (15%) was used for expenses, whereas said table of rates did not contemplate that any sum should be deducted therefrom for expenses; that said rates were so adopted in 1901 and were of and in themselves inadequate and insufficient to meet death losses as they occurred and provide a proper reserve for the payment of the policies of insurance in said Fourth Class as they matured, and that by reason of said deduction of fifteen per cent. (15%) and by reason of the members of said Fourth Class being re-rated at their age upon entry to said Endowment Rank and

not at their age attained when said rerating took place, said rates were still further inadequate and insufficient for the purposes afore-said; that said rates so adopted and put in force in 1901, did, however, produce sufficient sums to meet said deficit in said Fourth Class Mortuary Funds, to pay said death claims and to create a mortuary fund in said Fourth Class, which mortuary fund constantly increased until and including the year 1907, since which said time said mortuary fund has constantly diminished up to January 1st, 1911, since which time said mortuary fund has

151 steadily increased; that all legitimate and legal death claims upon or against said Fourth Class, have always been paid in full, but that until the rerating of 1910, which became effective January 1st, 1911, as hereinafter averred, said Fourth Class was never upon an adequate rate and never at any time had on hands sufficient funds which, with the future contributions of the mem-

76

bers thereof on the rates then in force, would produce sufficient funds to pay its outstanding insurance liabilities.

Said defendant further admits that under its constitution establishing the Fourth Class of said Endowment Rank it was provided that the Endowment Fund for the payment of benefits in said Class should be derived from monthly payments of each member, said payments to be for each One Thousand Dollars (\$1,000) of insurance, and to be graded according to the age of each member at the time of making application and his expectancy of life, his age being taken as of his nearest birthday, and such other and additional assessments as might from time to time become necessary; that so much of said monthly payments as should equal the cost of such insurance should constitute the Endowment Fund, and that the residue of said monthly payments should be placed in a reserve fund, such payments to continue as long as the membership of any of such applicants should continue.

Said defendant further admits that under the provision of said law or constitution a table of rates was established, based upon the age of the member, and it was determined what proportion of the rates paid for insurance should be apportioned to the Endowment Fund, and what portion should be dedicated to said reserve fund, together with the monthly dues paid by the members, but denies that said table of rates was that established by the National Fraternal Congress.

152 Defendant avers that these complainants became members of the Endowment Rank of said Knights of Pythias long prior to the 22nd day of October, 1892; that all persons who became members of said Endowment Rank of said Knights of Pythias prior to said last named date, including these complainants, received certificates of membership in said Endowment Rank and accepted the same, by the terms of which said certificates it was provided, among

other things that:

"In consideration of the payment hereafter to said Endowment Rank of all assessments as required and the full compliance with all laws governing this rank now in force, or that may hereafter be enacted,"

the said Supreme Lodge Knights of Pythias would pay to the beneficiary or beneficiaries therein designated the face of said certificate, but that it was moreover provided in each and all of said certificates so issued prior to October 22nd, 1892, as follows:

"Provided further that if at the time of the death of said brother and the proceeds of one assessment on all members of the Endowment Rank, shall not be sufficient to pay in full the maximum amount of the endowment held under this certificate, then there shall be paid an amount, less than ten per cent. for expenses, equal to the proceeds of one full assessment on all remaining members of the Endowment Rank, and the payment of such sum to the beneficiary or beneficiaries mentioned herein shall be in full of all claims and demands under and by virtue of this certificate."

That while said certificates were issued in said form and contained said provisions, the said Knights of Pythias and the Endowment Rank thereof did not incur any obligation to pay any definite or fixed sum to the beneficiaries named therein over and above that which might be realized from such assessments so to be levied.

That thereafter, to-wit: commencing on the 21st day of October, 1892, the form of the certificate of the membership in said Endowment Rank in the order of Knights of Pythias was through by-laws duly adopted by the Supreme Lodge Knights of Pythias so altered and changed that the said Endowment Rank of said Knights of

153 Pythias, and the said Knights of Pythias did thereafter assume a definite fixed liability with respect to each membership certificate and agreed to pay a fixed sum to the beneficiaries named in said certificate provided the person to whom such certificate of membership was issued should thereafter comply with all the conditions contained in such certificate, and the laws governing said rank then in force, or that might thereafter, be enacted by

the said Supreme Lodge.

That these complainants were duly represented in the manner herein set out, and averred, in the Supreme Lodge which authorized such change to be made in said certificate of membership, and that these complainants acquiesced in, confirmed, ratified and approved the change in such membership certificate, and as members of said Endowment Rank had full knowledge and notice that many persons were joining said Endowment Rank and receiving said certificates, in and by the terms of which said Supreme Lodge Knights of Pythias agreed to pay to the beneficiaries of said persons certain

definite and fixed sums, and that these complainants and the other members of said Endowment Rank who held certificates prior to October 22, 1892, made no objection or protest of any kind or character to the change in said form of certificate, but that each and all of said members, including these complainants, through their chosen representatives, invited, solicited and procured other persons to become members of said Endowment Rank and to take, receive and accept certificates with a definite and fixed sum therein named, and without said certificates granting or giving to the said Supreme Lodge Knights of Pythias the right to pay in lieu of the amount specifically named therein the proceeds of one assessment; that a large number of persons did in *take* take, receive and accept said certificates of the form hereinbefore described, issued subsequently to October 22, 1892, and that a large number of persons, to-wit: — persons are now members in good standing of said Fourth Class whose certificates are of said form, and in and by the terms  
 154 of which the defendant has agreed to pay to the beneficiaries therein named a definite and fixed sum; that said Supreme Lodge by the issuance of said certificates last mentioned and described assumed a definite obligation to pay a fixed sum of money to the beneficiaries named therein; that the rates for said insurance adopted and in force prior to the rerating of 1910, as hereinafter

## 79

averred, were and are entirely insufficient to enable the said defendant to meet the obligations assumed by it by the issuance of said certificates; that these complainants by permitting the said defendant to issue said certificates last mentioned and described, without objection or protest, and by permitting a large number of persons to become members of said Insurance Department under said conditions, without making any objection or protest, by reason of said laches have estopped themselves to deny the right of said defendant to increase the rates charged for insurance, so that said defendant may meet the obligations so assumed b- it.

## IV.

Said defendant further admits that by the constitution and laws of said order it was further provided that said reserve fund, consisting of said membership fees and parts of monthly payments provided for in Section 5 of Article 5 of said constitution of said Endowment Rank (now Insurance Department) should be in the keeping of the Supreme Master of Exchequer, and that so much thereof as should not be needed for expenses should be invested by him under the superintendence of the Board of Control; but said defendant denies that said constitution required or provided for the maintenance of a separate expense fund for said Fourth Class, and denies that it excluded the rights of said Insurance Department to appropriate and pay out of said expense fund the legitimate charges and expenses of the other Classes of said Department.

155 Said defendant further admits that the object and purpose



of said constitutional provision establishing a fixed rate were, as stated by said defendant, to secure uniformity of the burdens and benefits of said Department, and that the mortuary fund created was for the protection of the members of said Fourth Class, but said defendant denies that it was ever irrevocably agreed or provided by the constitution of said defendant or its Endowment Rank, now Insurance Department, that said rate then adopted should forever remain unchanged or that no member should ever be required to pay an increased assessment; but on the contrary said defendant avers that by the charter or act of Congress under which said defendant was created and by the general statutes, by-laws and regulations of said defendant, and by reason of its strictly mutual and beneficial nature and character and also under the terms of its contracts of insurance or certificates of membership of said Endowment Rank, now Insurance Department, issued to all its members including the complainants, said defendant had reserved at all times the right to enact all reasonable and necessary by-laws, rules and regulations and to alter, amend and repeal any and all by-laws, rules and regulations theretofore adopted by said Supreme Lodge, including all reasonable and necessary modifications of its insurance rates in order to carry out the purpose of its being and enable it to meet the mutual obligations of said society and the members thereof, to each other, each of said members being, under the plan and purpose of said defendant's organization and under the laws governing the same, an insurer as well as an assured.

Said defendant further admits that said complainants named in said bill of complaint availed themselves of the benefits of said Endowment Rank (now Insurance Department) and that they have,

156 since admitted to membership therein, regularly and continuously paid to said defendant through the respective subordinate sections thereof the premiums due upon policies of insurance issued to them as members of said Fourth Class, until January 1st, 1911, and that said funds so contributed by said complainants and other members of said Class constituted an endowment fund for the payment of policies of insurance issued to such members in the event of death.

Defendant avers that from the organization of the Endowment Rank in 1880 down to the year ending March 31, 1886, a single expense fund was kept out of which was paid all the expenses of the First, Second and Third classes of said Rank, down to the time when the Fourth Class was organized in the year 1884, and from and after the organization of said Fourth Class in the year 1884 the expenses of the First, Second, Third and Fourth Classes were paid out of said expense fund, down to March 31, 1886; that at the end of the fiscal year 1885 and 1886 there was taken from the Fourth Class fund what was estimated to be their pro rata part of the expense of administration of the Endowment Rank, which amount

was paid into the common expense fund of the Endowment Rank; that by the year 1887 the First, Second and Third Classes had practically disappeared and but few members were left therein; that from the year 1887, down to and including the year 1894, there was a common expense fund kept for the First, Second and Third Classes, and a separate expense fund for the Fourth Class, and the two divisions were so separated until the year 1894; that from the fiscal year ending March 31, 1894, a single fund was maintained known as the "Endowment Fund" of the Endowment Rank, into which was transferred all of the funds on hand belonging to the First, Second, Third and Fourth Classes, and into which all of the receipts of the Endowment Rank were paid, and out of which all

82

of the expenses and death losses were paid, down to and including the fiscal year ending December 31, 1905; and that at no time since 1894 has there been any separate expense fund maintained or in existence for any class of said Insurance Department, but that since said date all expenses of said Insurance Department have been paid with the full knowledge, acquiescence and consent of all members thereof from a common fund known as the "Endowment Fund" to which all members have contributed; that subsequent to January 1, 1907, all expenses of said insurance department have been paid out of the common expense fund of said Insurance Department.

Said defendant further admits that during their membership said complainants have, in accordance with the direction of said defendant and as provided by its constitution and in accordance with the conditions of their respective policies, contributed regularly the respective amounts therein recited and required to be paid, which premiums were payable monthly in advance, except and until the beginning of the present year, and that on January 2nd, 1911, they severally tendered the amount of the respective premiums theretofore collected from them to the authorized representatives of said subordinate sections of which they were members, and that said tenders were, in accordance with defendant's directions, refused; and that each of said complainants protested against defendant's action in refusing to accept payment of the monthly dues so tendered.

But said defendant avers that prior to the 1st day of January, 1911, the rates theretofore collected from the members of said Fourth Class, including said complainants, were, by the action of said defendant at its biennial session for the year 1910, duly and legally advanced in accordance with the authority conferred upon it by its

83

charter and the laws to which it was subject, and that each of said complainants declined and refused to pay the sums respectively due from them under said table of rates so fixed and established at said 1910 biennial session, and that such default by said complainants and each of them has continued until this time.

158

Said defendant avers that there was in force on and prior to January 1st, 1911, and at all times since said defendant was organized, a law and regulation of said society in substance to the effect that each member of said Endowment Rank, now Insurance Department, should be and was bound to conform to and comply with all laws and regulations passed by said Supreme Lodge Knights of Pythias touching said Endowment Rank (now said Insurance Department), failing in which any such member should forfeit his membership in said Endowment Rank or Insurance Department and all right and benefit in and to the funds of said Endowment Rank or Insurance Department created and maintained for the protection of its membership; and that each of said complainants agreed, when their respective policies of insurance were issued to them, to submit to and be bound by said existing laws of said organization or any modifications and amendments thereof.

And said defendant avers that by failing and refusing to pay the advanced rate so established at its biennial session in 1910 as they were required to do, and by failing and refusing to tender such advanced rate which was then the legally established rate applicable to each of such members, said complainants and each of them ceased to be members of said Insurance Department and ceased to have any claim upon or interest in any fund or property thereof.

## VII.

Said defendant admits that said Fourth Class, to which complain-

84

ants belonged, was organized by said defendant in 1884; and that its membership, on December 31st, 1906, had reached a total of eighty-one thousand, nine hundred nineteen (81,919); but said defendant denies that at that time there was no other Class of insurance in said Endowment Rank (now Insurance Department) other than said Fourth Class, and denies that said First, Second and Third Classes had been eliminated, but avers that the membership of said

159 First, Second and Third Classes had become and was rapidly depleted after the formation of said Fourth Class by voluntary transfers to said Fourth Class, by abandonment or forfeiture under said earlier Classes or by the death of the members thereof, until 1906, when the entire membership in the First, and Second Classes was eight persons, and the Third Class had become entirely extinct.

## VIII.

Said defendant admits that in 1906 the total liabilities under its contracts of insurance outstanding amounted to One Hundred Twenty-five Million, Four Hundred Fifty-five Thousand Dollars, (\$125,455,000.00); and that the total funds belonging to said Department then amounted to One Million Seven Hundred Sixty-six Thousand, Nine Hundred Twenty-four and 22/100 Dollars (\$1,

766,924.22); but said defendant denies that said last mentioned fund belonged to or was created for the exclusive benefit of said Fourth class, but avers that included therein was the expense fund created by contributions from all classes ratably and maintained for the purpose of paying the expenses of said entire Department.

Said defendant admits that the membership of said Fourth Class was, at that time, advancing in years, and that the mortality of said Class was necessarily increasing and ultimately threatening the destruction of said Insurance Department (formerly Endowment

## 85

Rank), owing to the inability of said defendant to meet the obligations it had assumed under the policies of insurance which it had issued (unless the rates then charged and collected for such insurance should be materially increased); that realizing its perilous condition and its inability to discharge its obligations (without such increase in rates) and in consequence thereof, the ultimate dismemberment and dissolution of said Insurance Department (and possibly the destruction of said defendant as a fraternal and benevolent organization), said defendant called to its assistance men skilled as actuaries in life insurance to formulate a plan by which defendant could meet the obligations it had assumed toward the membership of its Endowment Rank (now Insurance Department) and place the same upon a basis which would enable it in future to carry out its contracts.

But defendant denies that it at any time sought to "relieve" itself of such obligations in the sense of seeking to violate or repudiate the same.

Defendant further admits that it adopted a plan outlined and suggested by experienced actuaries, the basis of which plan is what is known generally as "the flat rate premium" for insurance based upon rates exacted by old line insurance companies, except as to expense loading which was less than that required by old line life insurance companies, and that the result of the adoption of said plan was to increase the premium rates of Fourth Class members and base the same upon the then age of said members, and that it was defendant's purpose to provide for the transfer of Fourth Class members to what is known as the Fifth Class, created at that time, such transfer, however, being entirely subject to the election of said Fourth Class members respectively.

Said defendant denies that in adopting said plan said defendant

## 86

intended to or did violate any law of its organization or any contract existing between it and complainants and the other members of said Fourth Class and denies that it thereby violated any of the rights of said complainants or any duty owing by it to said complainants or any of them; but avers that in establishing said advanced rate said defendant adopted the only course possible for the preservation and protection of said complainants and their respective rights

as members of said Fourth Class, and further avers that if said advance had not been made and said Fifth Class created and transfers made from said Fourth Class to said Fifth Class in large numbers, the mortuary fund of said Fourth Class would long ago have been greatly depleted and would have been entirely exhausted by the year 1913

or prior thereto and said Fourth Class members left without  
161 any protection whatever but said Class would have been wholly insolvent and permanently wrecked.

## IX.

Said defendant denies that at its biennial meeting in 1906, or at any other time it has sought to divorce its Insurance Department from the benevolent and fraternal Institutions of its organization and make said Insurance Department independent thereof, and said defendant admits that said Supreme Lodge has at all times and under all circumstances declared its purpose to be to protect all and singly the rights of its members and the mutual obligations of such members to each other to the utmost of its ability; but denies that it ever undertook to accomplish such protection regardless of the extent of its death losses compared with its receipts from all sources and avers that said defendant has no possible resources from which it could meet its obligations other than the receipts from its respective amount

## 87

stated in its various outstanding policies of insurance as they mature depends and always has depended solely upon collecting from its members ratably a sum sufficient in the aggregate to pay all death losses as they mature, together with the reasonable expense of administering said Department.

Said defendant further avers that in the very nature of its Insurance Department, including said Fourth Class, any agreement made by said defendant to pay any sum to the beneficiaries of any member upon his death necessarily involves and includes and always has included an obligation on the part of every surviving member of said Class to contribute such sums from time to time as would enable said defendant to pay such death losses, together with expenses of administration; and that said defendant has no other function or duty with respect to said Insurance Department than to act as the medium or agency through which the various members of said respective Classes of said Insurance Department are enabled to perform their mutual obligations to each other to maintain by their contributions from time to time a fund sufficient to meet all and all death claims properly chargeable thereto.

162 And said defendant avers that at no time has any rate been established or assessment, dues or other charges collected or demanded from the members of any Class in excess of the amount actually necessary to meet the obligations mutually undertaken by the members of said Class to each other and to pay the necessary and legitimate expenses of administration as hereinbefore stated.

## X.

Said defendant admits that after formulating a plan for the establishment of said Fifth Class it directed the issuance of notices to members of said Fourth Class, advising them that it was impossible

88

to continue the Fourth Class as established without increasing the rates of contribution then in force and advising said Fourth Class members to transfer their membership to said Fifth Class; and said defendant admits that in transferring to said Fifth Class the members of said Fourth Class were required to exchange the policies of insurance then held by them and accept in lieu thereof policies or certificates of membership executed by said Insurance Department to them as members of said Fifth Class, carrying a larger rate of contributions than that then applicable to said Fourth Class members; that said policies or certificates of membership in said Fifth Class were made subject to contest within three years from the date thereof, and that a formal proposition described as Exhibit "A" in complainant's bill was issued by said defendant to the various members of said Fourth Class; but said defendant denies that it thereby or therein repudiated or announced its purpose to violate any agreement or obligation whatever which it had previously undertaken or assumed with or to the members of said Fourth Class; and said defendant denies that it has ever attempted to destroy or impair the rights of said complainants under their said policies of insurance or to deprive them of any right to participate in the endowment, reserve and trust funds contributed by them or those similarly situated, and denies that any of its plans, if carried into effect, would be destructive of said complainant's rights to participate in said trust funds which they had created; and avers that it is and always has been the purpose of said defendant and of its Insurance Department to administer any and all trust funds controlled by it for the benefit of its members and particularly for the benefit of those whose contributions created said fund; save and except that

89

as to all members of said Fourth Class transferring to said Fifth Class they were each and all respectively fully advised that in so doing they surrendered and relinquished their interest in the mortuary fund of said Fourth Class but did not surrender their interest in the common expense fund created by the joint contributions of members of all classes and maintained for the purpose of meeting the expense of administering said entire Insurance Department.

That each and every member of said Fourth Class transferring to said Fifth Class voluntarily yielded and surrendered to the remaining members of said Fourth Class all interest of said transferring members in the mortuary fund of said Fourth Class in order to secure the better protection afforded to the members of said Fifth Class by the advanced rate agreed to be paid by the members thereof,

and that in surrendering their said interest in said Fourth Class mortuary fund and transferring to said Fifth Class the financial condition of said Fourth Class was vastly improved instead of being impaired and reduced, as alleged in said bill of complaint, and the per capita interest of those who remained in said Fourth Class in said mortuary fund was enormously increased, to-wit, by more than one thousand per cent. (1000%), over what it was and would have been, if said transfers had not been effected.

164 And said defendant denies that the death losses were larger in proportion to the amount of the said Fourth Class mortuary fund available for the payment thereof, than they would have been if said plan of transferring members to said Fifth Class had been devised and carried out.

## XI.

Said defendant avers that since 1906 the membership of said Fourth Class has been reduced from eighty-one thousand eight hundred nineteen (81,819) to much less than ten thousand, eight hundred thirty-two (10,832) as alleged in said bill of complaint, the present membership of said Fourth Class being approximately two thousand three hundred (2,300); and denies that it has ever furthered the interest of said Fifth Class to the prejudice of complainants and those similarly situated, but it admits that at the time its last official report was filed the membership of said Fourth Class was approximately ten thousand eight hundred thirty-two (10,832) and that the insurance then carried by them amounted to Twenty Million, Six Hundred Sixty-seven Thousand, Five Hundred Dollars (\$20,667,-00).

Said defendant denies that there is or was any fund on the 31st day of October 1910, known as the "endowment or reserve fund" belonging to said Fourth Class, but avers that the mortuary fund of said Fourth Class then amounted approximately to Six Hundred Fifteen Thousand Five Hundred Sixty-eight and 49/100 Dollars (\$615,568.49), and that in addition thereto there existed a general expense fund, created by contributions from all members of said Insurance Department and applicable to the payment of expenses of administering said entire department, including expenses of said Fourth Class.

Said defendant further admits that said mortuary fund of said Fourth Class was grossly inadequate at said time to provide for the future death losses likely to accrue against the same except and unless the rates of insurance then paid by the members of said

165 Fourth Class should be largely increased and the transfer of members from said Fourth Class and the voluntary surrender of members so transferring of their interest in said Fourth Class mortuary fund should so far relieve the safe of liabilities for death losses and reduce the membership of said Fourth Class as to enormously increase the per capita interest of said Fourth Class members remaining in said Fourth Class Mortuary fund.

Said defendant further avers that the transfer of members from



## 91

said Fourth Class to said Fifth Class has greatly increased such per capita interest and has thereby greatly strengthened said mortuary fund in proportion to its liabilities, but that it still was inadequate to protect said members remaining in said Fourth Class without increasing their rates of insurance then in force; but that to render said Fourth Class mortuary fund solvent and adequate to meet all future death losses as they matured it became and was necessary to and said defendant did increase the rates of insurance of the members of said Class, which increased rate became effective January 1st, 1911, since which time said Fourth Class has become and is able, if the members thereof continue to pay said increased rate, to meet not only the present but all other losses of liabilities as they shall accrue.

## XII.

Said defendant admits that through its Supreme Chancellor an open letter has been addressed to the members of said Fourth Class stating in substance that the receipts of the mortuary fund for 1908 amounted to One Million, One Hundred Seventy-three Thousand, Sixty-six and 38/100 Dollars, (\$1,173,066.38), and that the disbursements exceeded such receipts in the sum of Two Hundred Twenty-eight Thousand Seven Hundred Twenty-four and 24/100 Dollars (\$228,724.24); that in 1909 the losses occurring in the Fourth Class amounted to Nine Hundred Ninety Thousand Five Hundred Dollars (\$990,500.00) and that the total mortuary receipts of said Fourth Class were only Six Hundred Thirty-eight Thousand, Eight Hundred Eighty-five and 63/100 Dollars (\$638,885.63); that the total disbursements in the Fourth Class amounted to One Million Forty-Thousand Four Hundred Eighty-four and 7/100 Dollars (\$1,040,484.07) an excess over receipts of Four Hundred One Thousand, Five Hundred Ninety-eight and

## 92

44/100 Dollars (\$401,598.44); that the mortuary receipts for the Fourth Class for the first six months of 1910 amounted to Two Hundred Eighty-nine Thousand, Five Hundred Nineteen and 6/100 Dollars (\$289,519.06) and that the disbursements for said six months period amounted to Four Hundred Thirty-nine Thousand Three Hundred Fifty-six Dollars (\$439,356.00) making an excess of disbursements over receipts for said period of One Hundred Forty-nine Thousand Eight Hundred Forty-five and 94/100 Dollars (\$149,845.94), notwithstanding the fact that three special assessments of double the amount ordinarily paid had been levied. That the excess disbursements from the receipts for the years 1908, 1909 and the first six months of 1910 amounted to Seven Hundred Eighty Thousand One Hundred Sixty-eight and 62/100 Dollars, (\$780,168.62) and that if special assessments had not been levied during said period the disbursements would have exceeded the receipts by at least One Million Dollars (\$1,000,000.00). That the member-

ship of said Fourth Class on October 31st, 1910, amounted to ten thousand eight-hundred thirty-two (10,832) in number, carrying insurance of Twenty Million Six Hundred Sixty-seven Thousand Five Hundred Dollars (\$20,667,500) and that the amount in the mortuary fund of the Fourth Class on October 31st, 1910, was Six Hundred Fifteen Thousand Five Hundred Sixty-eight and 49/100 Dollars, (\$615,568.49) whereas upon the basis of the insurance carried by the members of the Fourth Class based upon their respective ages, as figured by the actuary appointed by said defendant to formulate a plan for safe insurance, as aforesaid, said mortuary fund should have been upwards of Seven Million Dollars (\$7,000,000.00).

167 Said defendant further avers that each and every statement made in said open letter was true, and that if it had not been for the creation of said Fifth Class and the reduction in membership of said Fourth Class since October 31st, 1910, by transfer, death and forfeiture, together with an increase of insurance rates applicable to said Fourth Class, effective January 1st, 1911, said Fourth Class mortuary fund would already be greatly depleted and would have been entirely exhausted by the year 1913, or sooner, as well as all other resources of said Fourth Class, and complainants together with all other members of said Fourth Class, would have been by the year 1913, or sooner, left absolutely without any protection whatever.

Said defendant admits that, as shown by its reports, the membership composing said Fourth Class on December 31st, 1909, (not September 1st, 1909, as alleged in said bill of Complaint) embraced sixty-six (66) members over the age of eighty (80) years, carrying insurance amounting to One Hundred Twenty-four Thousand Dollars, (\$124,000.00); three hundred sixty-one (361) members over the age of seventy-five (75) years, carrying insurance to the amount of Seven Hundred Sixty-four Thousand Dollars (\$764,000.00) and twenty-two hundred eighty-one (2,281) members (instead of twenty-six hundred seventy-three members, as alleged in said bill of complaint) over the age of sixty-five (65) years, carrying insurance to the amount of Four Million Nine Hundred Sixty-two Thousand Five Hundred Dollars (\$4,962,500) (instead of Five Million Seven Hundred Ninety-seven Thousand Five Hundred Dollars (\$5,797,500.00) as alleged in said bill of complaint); that those members of the Fourth Class whose ages are below sixty-five years have, upon the basis of said actuary's statistics, reached the average time upon which insurance rates are calculated, and in consequence thereof the mortality of said Fourth Class must be necessarily increased, calling as it does for a reserve ten times larger than that then held by said defendant to meet the demands of said Fourth Class membership.

168

94

Said defendant avers that each and all of said statements so contained in said letter or announcement were absolutely true as established by the best known insurance statistics.

## XIII.

Said defendant denies that the immediately maturing obligations of said Fourth Class will in all probability absorb the resources of said Fourth Class, and denies that complainants have any right to accounting or distribution of said fund, but avers that by the general statutes and laws of said defendant governing said Insurance Department no member has any divisible interest whatever in said fund or any part thereof.

## XIV.

Said Defendant admits after the establishment of said Endowment Rank (now Insurance Department) and of the Fourth Class thereunder, and to-wit; in the year 1892, it created a board of control charged with the administration and protection of all the funds of said Endowment Rank, but denies that it has been grossly negligent or negligent in any degree in the performance of its duty, (except as hereinafter stated), but admits that at one time prior to 1901 certain funds of said Department were misappropriated by the then officers of said Insurance Department, entailing heavy losses to the funds of said Insurance Department; but the defendant avers that the principal of all the funds that were so misappropriated and supposed to be lost by such defalcation were recovered and that said Insurance Department sustained no loss with respect to such defalcation aside from counsel fees and expenses incurred in the recovery of said funds; the defendant denies that the funds so misappropriated were replaced by voluntary contributions by members of the Fourth Class, but avers that said funds were, as hereinbefore stated, recovered from the officers who had been guilty of misappropriating the same.

## 95

169 The defendant admits that plans were formulated by said defendant to organize said Fifth Class and the members of said Fourth Class advised to transfer to said Fifth Class; and that pursuant to such advice so given more than seventy thousand (70,000) members of said Fourth Class who were under fifty (50) years of age transferred to said Fifth Class, but said defendant denies that if said transferring members had remained members of said Fourth Class they would or could have maintained a reserve or mortuary fund sufficiently large, if honestly and judiciously administered, to protect the members of said Fourth Class, and denies that the acts of those in control of said Department impaired the reserve and trust fund applicable to the protection of said Fourth Class membership, but avers the contrary to be true, as hereinbefore specifically set forth.

Said defendant denies that the misappropriation of funds occurring prior to 1901 amounted to Five Hundred Thousand Dollars (\$500,000.00) as alleged in said bill of complaint, but avers that whatever amount was misappropriated was recovered from the officers who misappropriated the same with interest, as alleged in the bill of

complaint; the defendant denies that it has with-eld any part thereof from the funds to which the same belonged, and avers the fact to be that all sums so recovered were returned to the proper funds from which they were abstracted. The defendant denies that any part of any sum so misappropriated was made up by the voluntary contributions of the then members of the Fourth Class, as alleged in the bill of complaint.

Defendant further avers that since the defalcation herein referred to the funds and affairs of said Endowment Rank, now Insurance Department, have, at all times, been honestly, economically and fairly administered, and that there is not now and has not been since said defalcation was discovered any person or persons connected with

170

96

said Endowment Rank or Insurance Department who had been guilty of any such defalcation; that none of the present officers of said Insurance Department have been guilty of or charged with any misappropriation of its funds, but have protected and administered the same honestly and in full appreciation of their trust and character.

## XV.

Said defendant denies that its Board of Control has abstracted and used from said Fourth Class fund the sum of Three Hundred Ninety-four Thousand Eighty-two and 25/100 Dollars (\$394,082.25) or any other sum in advancing and developing any new scheme of insurance organized by said defendant or for any other purpose, and admits that it has declined and refused to turn over to said Fourth Class said sum so alleged by said complainants to have been abstracted, and denies that the Fifth Class of said Insurance Department has received the benefit of said sum or any sum so diverted or abstracted.

## XVI.

Said defendant admits that there are no new members being received into said Fourth Class, and that no efforts are being made to increase the membership thereof, but denies that no effort is being made to increase the funds available for the benefit of said Fourth Class members, but on the contrary avers that defendant has earnestly attempted to increase and enlarge said Fourth Class funds by increasing the rates of insurance of the membership thereof in order to meet the losses accruing to said funds as hereinbefore stated.

Said defendant denies that as at present administered said Fourth Class fund is inadequate to meet the losses and charges accruing thereto at the present effective rates applicable to said Fourth Class

97

membership, but admits that said fund would have been inadequate to meet said charges, if said rates had not been increased as afore-

said and said fund replenished from time to time by said in-

171 creased premiums paid by the members of said Class.

Said defendant denies that said Fourth Class is insolvent, but avers that since January 1, 1911, said Fourth Class at all times has been and now is wholly solvent in every respect and has ample funds which, with the future contributions from its members, will enable said Fourth Class to meet all of its obligations including all of its insurance liabilities.

## XVII.

Said defendant denies that there is any fund known as the "endowment and trust fund" of said Fourth Class, but avers that there is a fund known as the "mortuary fund" of said Fourth Class, which is independent of said Fifth Class and should be and is treated as a separate and distinct fund, and that all of the moneys, bonds, mortgages, notes, credits, securities and properties of every kind composing the mortuary fund of said Fourth Class belong to said Fourth Class and should be and always have been used exclusively for the benefit of the members thereof.

Said defendant denies that there is any other fund belonging exclusively to said Fourth Class and denies that by the action of said Board of Control and by the alleged defalcations and abstractions referred to in said bill of complaint the funds of said Fourth Class have become impaired.

## XVIIa.

Said defendant admits that each of the respective complainants named in said bill of complaint is the holder of a policy of insurance as described in said bill, and that each of said complainants has con-

98

tributed from time to time up to January 1st, 1911, the respective sums alleged to have been contributed to said Insurance Department.

172

## XVIII.

Defendant further avers that of those persons who were at the date of the filing of complainant's bill herein members of the Fourth Class of said Insurance Department, and who still remain members of said Fourth Class, all but three hundred (300) have expressly accepted in writing and approved said legislation of said Supreme Lodge Knights of Pythias of 1910, by applying for and accepting new certificates of membership in said Fourth Class, which have been received, accepted and retained by said members, in each and all of which said certificates it is expressly recited that said certificates are subject to all the laws governing said Insurance Department, enacted by the Supreme Lodge prior to the issuance of said certificate, and all laws thereafter to be enacted or adopted, and that each of said members of said Fourth Class has since the issuance and receipt of said new certificates paid to said Insurance Department all dues and assessments that have become due under and by virtue of said certi-

eates, and have paid the increased rates established by said Supreme Lodge in 1910, and have enjoyed since the issuance of said respective certificates, and now enjoy the full benefit of the protection afforded thereby, and that the remaining three hundred (300) members of the Fourth Class have consented to such rerating of 1910 by the payment of their increased rates of contribution since January 1st, 1911, and have during all of said time enjoyed the full benefit of protection afforded thereby.

### XIX.

Said defendant denies that by the acts complained of or by any other action on its part, or of its Insurance Department or the officers

### 99

thereof, the members of said Fourth Class or any of them are deprived of the protection vouchsafed to them by their contracts of insurance, and denies that any action so taken has been confidential or in violation of the contract obligations of said defendant, and denies that any action has resulted in the dismemberment of said Fourth Class members, and denies that said plan of transfer from said Fourth Class to said Fifth Class was designed to destroy or injure the members of said Fourth Class who declined to transfer, but on the contrary avers that said plan was adopted for the purpose of protecting and benefiting all the members of said class, including those who transferred, and those who declined to avail themselves of said opportunity to transfer; and further avers that the result of such plan, since the same was put in operation, has been to greatly benefit all the members of said Class.

Said defendant denies that it had any intention of seizing upon or diverting from their legitimate purposes any of the funds of said Fourth Class, or appropriating the same to the benefit of the members of said Fifth Class.

Said defendant admits that the Mortuary fund of said Fourth Class is a trust fund for the benefit of those who remain as members of said Fourth Class, but denies that it belonged exclusively to those who were members of said Fourth Class on the 1st day of January, 1911, averring the fact to be that since said last mentioned date the membership of said Fourth Class at that time has been greatly depleted by death, transfer and forfeiture, and that only those who continue in good standing as members of said class until death are entitled to participate through their beneficiaries in said Fourth Class Fund, and deny that any of said members of said Fourth Class now have, or ever had any divisible interest in said Mortuary fund.

### 100

### XX.

Said defendant admits that a number of suits have been instituted in various sections of the United States against defendant growing

out of the conditions that have arisen with reference to the funds of said Fourth Class; said defendant denies that the assets of  
174 said Fourth Class have been or are required to be seriously impaired or interfered with by reason of said suits several of which have been adjusted, or, are in the process of adjustment at comparatively nominal cost.

Said defendant avers that the appointment of a Receiver for said Fourth Class assets, or for said Insurance Department, would needlessly impair its credit by destroying confidence in the regular membership of said Department, which, because of the peculiar and strictly mutual character and nature thereof depends entirely for its prosperity and success upon the continued confidence of its members in said defendant, and in each other.

That if a Receiver is appointed receipts not only of said Fourth Class, but of said Insurance Department generally, will be immediately, in great part, suspended, and great and unnecessary loss entailed upon the membership of said defendant.

This defendant further avers that there are now in good standing in said Fourth Class approximately twenty-three hundred (2,300) members, carrying insurance of —; that on January 25, 1911, when complainants' bill of complaint herein was filed, the average age of said Fourth Class members was fifty-six and 38/100 (56.38) years, which said average age has increased somewhat since said date; that many of said members are beyond the age when they can procure any insurance at all and hundreds of them are of such impaired health that it would be impossible for them, regardless of age, to procure new insurance; that nineteen hundred (1,900) of said members have in writing expressly consented to such rerating of 1910, as

101

hereinbefore averred, and that the remaining three hundred (300) members of the Fourth Class have consented to such rerating of 1910 by the payment of their increased rates of contribution since  
175 January 1st, 1911; that if this Court should appoint a receiver for said Fourth Class funds, or any part thereof, and order a distribution of such funds, such action would result in great loss and damage to said members of the Fourth Class, would leave them at an advanced age without insurance protection and without power to procure insurance; that such appointment, if made, would result in far more injury to said members of the Fourth Class than it would in benefit to complainants and would also result in great harm and detriment to the Fifth Class and the Insurance Department of said defendant; that if complainants have been injured by the action of the said Supreme Lodge at all, they have a full, adequate, complete and effectual remedy at law and can maintain actions for the breach of their contracts, if the Supreme Lodge has invaded their rights, and that said complainants are not entitled, under such circumstances, to relief in a court of equity.



## XXI.

Said defendant further avers that said Supreme Lodge Knights of Pythias is a fraternal beneficial society, and that the same was organized and its affairs, including said Insurance Department, have always been managed and conducted for the sole benefit of its insured members, such payment, however, in all cases being subject to the members' compliance with the laws of said defendant; that all of said benefits as well as all expenses of said defendant are defrayed

## 102

and always have been defrayed from funds derived from dues and assessments collected from its members; and that its benefits are paid upon the death of its members, and can under its laws only be paid to the families, heirs, blood relatives, affianced wife or dependents of such deceased member.

That the membership of said society now aggregate more than seven hundred thousand persons, all of whom are members  
176 of subordinate lodges, which, in the aggregate exceed seven thousand in number; that by vote of all the members in the subordinate lodges representatives from their number are elected to the grand lodges of said defendant society, which grand lodges aggregate in number more than fifty; that each subordinate lodge is entitled to one representative to the grand lodge, and that each grand lodge is entitled to elect, and does elect, from its membership at least two representatives to said Supreme Lodge Knights of Pythias. That among the charter powers of said defendant is one of the following tenor and effect:

"That the said Supreme Lodge shall have power to establish the Uniform Rank and the Endowment Rank upon such terms and conditions and governed by such rules and regulations as to the supreme Lodge may seem proper."

Said defendant further avers that under said charter, and by reason of the nature and character of said defendant it possesses, and always has possessed and exercised full power to make, alter and change from time to time, as occasion required, such laws, rules and regulations as it deemed proper and necessary for carrying on its business affairs; and that it has always had and exercised from time to time the power to make the same applicable to all of its members in order to insure perfect mutuality of interest among them.

That acting under its powers so existing, said defendant has, since the organization of said Endowment Rank (now Insurance Department), required all members to agree in writing when applying for

## 103

membership to said Insurance Department to be bound and controlled by the laws of said society then in force and such laws as might thereafter be enacted for the government of the members of said Department, and to further agree that their respective in-

insurance contracts shall be controlled by the laws in force when the same were issued and by such laws as might thereafter be enacted, and such regulations as might thereafter from time to time be adopted by the properly constituted authorities of said Insurance Department or by said Supreme Lodge Knights of Pythias, and that the certificate of membership in said Insurance Department issued to and held by each of said complainants named in said bill of complaint, and all other members of said Insurance Department contains upon its face an express provision in substance and to the effect that the holder thereof, by accepting the same, agrees to be bound by such laws and regulations touching the government of said Insurance Department as may thereafter be adopted, and that his said contract of insurance should be subject thereto; all of which will hereafter be made to more fully appear by the introduction in evidence of said respective policies of insurance.

Defendant further avers that by the rules, regulations and statutes in force on and prior to July 1, 1892, it was the duty of the Board of Control of said Insurance Department to report to said Supreme Lodge Knights of Pythias at its biennial session the condition of all funds belonging to said Department, and the manner, plan and method under which the same were managed and controlled.

That in 1906 said Fifth Class was created, and that ever since that time reports have been regularly made by said Board of Control, showing the maintenance of a single expense fund created by contributions from the members of all classes, including said Fifth Class, and that said respective reports of said Board of Control were

104

each and all approved, and the method of administering said expense fund concurred in by said several consecutive biennial sessions.

That on the 22nd day of January, 1900, the Board of Control of said Endowment Rank had enacted and adopted a certain resolution touching the funds of said Endowment Rank whereby among other things it was provided as follows:

"Resolved, that from and after December 31, 1899, the Endowment Rank shall be divided into two separate and distinct funds to be known as Mortuary and Expense Funds, etc."

178 which resolution was printed in the published edition of the Constitution governing the said Endowment Rank in November, 1900, and that said constitution was immediately thereafter promulgated and distributed among the members of said department, and the provisions of said resolution made known to all the members thereof.

That thereafter there was adopted at a session of said Supreme Lodge Knights of Pythias held in 1901 a section of the Supreme States of said order (then section 363) as follows:

"The amounts received under the above table shall be divided into two separate and distinct funds to be known as the Mortuary and

Expense funds, ninety per cent. from the receipts of assessment from the above table shall be known as a mortuary fund, and ten per cent. of the receipts from the assessments under said table shall be paid into and shall be the expense fund."

Defendant further avers that from the fiscal year ending March 31, 1894, down to and including the fiscal year ending December 31, 1903, a single fund was maintained known as the "Endowment Fund" of the Endowment Rank, into which was transferred all of the funds on hand belonging to the First, Second, Third and Fourth Classes, and into which all the receipts of the Endowment Rank were paid, and out of which all the expenses and death losses were paid; that the disbursements for expenses, while paid out of this fund, were so kept on the books of said Endowment Rank, that it was and

105

is possible to ascertain what amounts were spent during that time for expenses.

That at the Biennial convention of said Supreme Lodge Knights of Pythias held in New Orleans, Louisiana, in October, 1906, said section was by resolution of said convention reaffirmed and interpreted to mean that 10% of said receipts net should be retained as a part of said expense fund, and that an additional 5% should be deducted from said receipts as a commission for the agent or section secretary collecting said premiums.

179 That at said 1906 biennial session there was adopted a section of the Supreme Statute known as Section 393 as follows:

"For the purpose of effecting the orderly conduct of the business of the insurance department of this society, there is hereby created a board of trustees, to be known as the 'Board of Control,' which Board shall have full charge and complete control of the business and affairs of the insurance department, subject at all times and in all things to the direction of, and to account and report to, the Supreme Lodge Knights of Pythias."

Said defendant avers that all of the proceedings of said respective biennial sessions of said Supreme Lodge were promulgated shortly after the adjournment of said respective sessions and widely distributed among the membership of said order throughout the United States and foreign countries whereby all of said members, including the said complainants became and were fully advised as to the conditions of said respective funds, and the manner in which they were uniformly administered, including the acts of said defendant and its Insurance Department and officers complained of in said bill of complaint down to and including the biennial session of said Supreme Lodge for 1910.

That during all of said years complainants were members of said order, and with full knowledge of the facts and conditions alleged in said complaint acquiesced therein without protest or objection, and continued to receive and have received during all of said years, the protection provided for by their respective policies of insurance

## 106

worth largely more than the amount they were paying for the same during said time according to any known and approved insurance tables.

Said defendant avers that all steps taken and acts done by said insurance department and its officers touching the re-organization of said Insurance Department, the creation of the Fifth Class and the invitation of said Fourth Class to avail themselves of the opportunity to transfer to said Fifth Class afforded by said Insurance Department, and all other acts done by said Insurance Department during the past twenty years pertaining to the affairs of said Insurance Department complained of in said bill of complaint, said defendant and its Insurance Department have been guided solely and singly by a sincere desire to administer the prudential affairs of said society for the interest of all its members, and in strict regard to the rights of said members among themselves; that each and every act complained of during said period pertains to matters of internal administrative and prudential concerns over which, by the laws creating and governing said defendant, its Supreme Lodge, and its Insurance Department acting thereunder, have supreme, final and exclusive power and control.

## XII.

Said defendant further avers that among the provisions of the Supreme Statutes of said Grand Lodge now, and for many years prior to this date is the following known as Section 509, to wit:

"No member of the Insurance Department shall have any divisible interest in the funds or properties of the Insurance department, and, except as provided for in these laws with respect to the members of the Fifth Class, there shall be no apportionment of any of said funds at any time, and then only as provided for in the accounting required to be made in the Fifth Class. Except as it may appear otherwise in the accounting in the Fifth Class, no member of the In-

## 107

Insurance Department shall have any claim whatever, during his lifetime, to any part of the funds or properties of the Insurance Department, or to have any portion of same applied to the maintenance of his certificate, and then only as these statutes expressly provide respecting the accounting and lapsing of assessments, except further in the case of members of plans "A" "B" and "D" who may be entitled to paid-up or extended insurance in the manner and to the extent in these laws provided."

Said defendant avers that during all the time the acts of said defendant and its Insurance Department and officers, are alleged in said bill to have been committed and done, with reference to the relations between said Fourth Class and said Fifth Class, the statute

above quoted has been in force and complainants have had full knowledge thereof, and continued until the first day of 181 January, 1911, to pay the sums required of them as members of said department in order to maintain their insurance rights and privileges, and that during said time they received, and each of them received, substantial benefit as members of said department in the form of life insurance, the same being of a large pecuniary value and greatly in excess of the sums continued by them, as aforesaid.

That it would, therefore, be inequitable to permit them to disavow and repudiate the action of said defendant and its Insurance Department in which they have actually participated and through which they have received large benefits, as aforesaid, and thereby deny to the beneficiaries of such members as may hereafter die while in good standing, as members of said Insurance Department, the indemnity provided for in their respective certificates of insurance.

That said Insurance Department, including said Fourth Class will be amply able if permitted to go forward with its present plan of operating said department as hereinbefore detailed in accordance with the laws and statutes of said order to meet all death losses as they mature, and thereby carry out the plans and purposes of said organization; that neither said defendant nor said Insurance De-

## 108

partment as a whole, nor said Fourth Class, is insolvent, or was insolvent when said bill of complaint was filed.

And this defendant denies all and all manner of unlawful combinations and confederacy wherewith it is by this said bill charged, and denies that complainants are without an adequate, complete and effectual remedy at law; without this there is any other matter, cause or thing in said complainants' said bill of complaint contained herein and hereby well and sufficiently answered, confessed, traversed and avoided or denied is true to the knowledge or belief of this defendant, all which matters and things this defendant is ready

and willing to aver, maintain and prove as this Honorable 182 Court shall direct; and humbly prays to be hence dismissed with its reasonable costs and charges in this behalf most wrongfully sustained. (Signed) J. P. Goodrich, Miller, Shirley, Miller & Thompson, Solicitors for Defendant.

And it is also stipulated that the replication now on file shall be deemed and held as a replication to said amended answer.

And afterwards, to wit: at the November Term of the District Court of the United States for the District of Indiana, on the 6th day of May, 1912, before the Honorable Albert B. Anderson, judge of said court, the following further proceedings in the above entitled cause were had, to wit:

**GENERAL CONTINUANCE.**

Ordered by the Court that all complaints and proceedings depending in said court and not specially continued be, and the same are hereby, continued until the next term of this court.

109

And afterwards, to wit: at the May Term of the District Court of the United States for the District of Indiana, on the 26th day of June, 1912, before the Honorable Albert B. Anderson, judge of said court, the following further proceedings in the above entitled cause were had, to wit:

Come now the complainants, by counsel, and upon their motion it is ordered that the above entitled cause be and the same is hereby referred to Edward Daniels, Esq., who is hereby appointed a Special Master herein, to take the evidence and report the same, together with his finding of facts and conclusions, to this Court with all convenient speed.

And afterwards, to wit: at the May Term of said court, on the 4th day of November, 1912, before the Honorable Albert B. Anderson, judge of said court, the following further proceedings in the above entitled cause were had, to wit:

183

**GENERAL CONTINUANCE.**

Ordered by the Court that all complaints and proceedings depending in said Court and not specially continued be, and the same are hereby, continued until the next term of this court.

And afterwards, to wit: at the November Term of said court, on the 10th day of April, 1913, before the Honorable Albert B. Anderson, judge of said court, the following further proceedings in the above entitled cause were had, to wit:

Comes now the defendant, by counsel, and files its petition for leave to file a cross bill and notice of the same, and also tenders its cross bill herein, which are, respectively in the words and figures following, to wit:

110

**PETITION OF DEFENDANT TO FILE A CROSS-BILL OF COMPLAINT AGAINST THE COMPLAINANTS.**

To the Honorable Judge of said Court:

Your petitioner, Supreme Lodge Knights of Pythias, respectfully shows unto your Honor that heretofore, to wit: on the 25th day of January, 1911, the complainants, as members of the Fourth Class of the Insurance Department of the Supreme Lodge Knights of Pythias, filed their bill of complaint, on behalf of themselves and all others similarly situated, to wit: all members of said Fourth Class in good standing on January 1, 1911, against defendant alleging

among other things, that certain funds belonging to the Fourth Class of said Insurance Department, to wit: the expense fund thereof, amounting on January 1, 1907, to \$394,082.25, and subsequent accretions thereto, had been unlawfully used by the officers of said Department for the advancement of the Fifth Class of said Insurance Department and in the payment of the expense of establishing

## 111

said Fifth Class. That said Bill further alleges that the Fourth Class funds are hopelessly insufficient and inadequate to meet its obligations and that said Class is insolvent. Said bill asks for the appointment of a receiver, an accounting and a distribution of the funds among the members of the Fourth Class entitled thereto.

Your petitioner further shows that subsequently, on the 16th day of March, 1911, defendant filed its answer to said cause and thereafter, to-wit, (leave so to do having been first obtained) on April 14, 1911, defendant filed its amended answer in said cause and thereafter, on May 5, 1911, complainants filed their replication therein. Subsequently, on February 26th, 1912, by consent of parties, defendant withdrew its amended answer and filed another amended answer, and by agreement and stipulation of the parties, the replication theretofore filed by complainants was held and taken as a replication to the amended answer and said cause was thereby put at issue.

Your petitioner further shows unto your Honor that on the 27th day of January, 1911, one Fritz Heimsoth, "on behalf of himself and all other members of the Fourth Class Endowment Rank of the Supreme Lodge Knights of Pythias" filed in the Circuit Court of the United States for the District of Indiana his bill of complaint against this defendant (and others) in which he charged, among other things, that said defendant through its officers in charge of the Insurance Department had wrongfully disbursed for the benefit of the Fifth Class of said Insurance Department a sum of money amounting, on the first day of January, 1907 to \$394,082.25 or more, comprising what was known as the expense fund and subsequent accretions thereto, which said complainant alleged to be held in trust by said Insurance Department for the exclusive benefit of its Fourth Class members, said sum being the total amount of the expense fund of said Insurance Department on January 1st, 1907, when said Fifth Class was instituted.

## 112

That thereafter proper answers were filed by the defendant herein and its co-defendants to said original bill of complaint and issues properly joined thereon, including the issue raised by said original bill of complaint as to the alleged wrongful use of said \$394,082.25 constituting said expense fund.

That thereafter, to-wit, on December 18th, 1911, said complainant Heimsoth filed a supplemental bill on behalf of himself and



all other members of said Fourth Class wherein said complainant charged that said defendant herein, through the officers of its said Insurance Department, had since the filing of said original bill transferred from the expense fund of said Insurance Department about \$120,000 to the Mortuary Fund of the Fifth Class and about \$17,000 to the Mortuary Fund of the Fourth Class, which transfer and distribution was alleged by said complainant to be grossly unjust and inequitable to said Fourth Class, and praying, among other things, that upon the final hearing said transfer to said Fifth Class be declared to be illegal and said entire fund or so much thereof as properly belonged to said Fourth Class be declared to be the property of said Fourth Class.

That thereafter such proceedings were had in said cause as that the same was put at issue both as to the matters alleged in said original bill and said supplemental bill of complaint.

That said cause was duly referred to Honorable Edward Daniels Master of Chancery, who, after hearing the evidence therein and argument of counsel, reported his findings of fact and stated his conclusions of law thereon to this Court on the 18th day of February, 1913, wherein said Master of Chancery reported, in substance, among other things, that said \$394,082.25 was properly and lawfully used by defendant herein through its Insurance Department for the benefit of said Fourth Class; that said original bill was without equity and that complainant was not entitled to recover thereon; but that as to said supplemental bill the equities were with the complain-

## 113

ant, and that said complainant was entitled to have distributed to said Fourth Class from said expense fund the sum of \$71,534.04 in order to proportionally equalize it with said Fifth Class by reason of said previous distribution to said respective classes alleged in said supplemental bill of complaint.

That thereafter, to-wit, on the 24th day of March, 1913, no exceptions having been filed to said report and the time for filing exceptions having expired, a decree was entered by this Court upon the motion of defendants duly confirming and approving the report of said Master in Chancery and directing said defendant herein through the officers of said Insurance Department to forthwith transfer from the common expense fund of said Insurance Department to the mortuary fund of said Fourth Class said sum of \$71,534.04 in cash or securities of like value, less the sum of \$10,000 allowed to complainants counsel for services rendered and expenses incurred in the prosecution of said cause and the recovery of said fund on behalf of said Fourth Class.

That said decree has not been reversed, set aside, modified or appealed from but remains in full force, virtue and effect.

Your petitioner further avers that said report of said Master was so filed and said decree of said Court so entered and executed since this cause was put at issue, and that thereby the matters and things in dispute so far as pertain to the use and disposition of said \$394,-

082.25, being the amount of the expense fund of said Insurance Department on said first day of January, 1907, and any accretions or additions thereto, alleged by said complainants Holt and others, to have been misapplied or misused have been fully adjudicated as between the parties since this cause was put at issue; and that it was necessary in order that substantial justice may be done between the parties to this cause that the issues herein may be opened and that this defendant permitted to file a cross-bill herein properly setting up said proceedings, judgment and decree in said suit wherein

187 said Fritz Heimsoth, on behalf of himself and other members of said Fourth Class was complainant and this defendant with others, was defendant.

Said complainant further avers that the cause of action herein sued upon, in so far as the same pertains to the alleged wrongful disposition and misuse of said expense fund, amounting to \$394.082.25 and all accretions thereto, is the identical cause of action as that sued on b- said Fritz Heimsoth for the benefit of the members of said Fourth Class above mentioned and that the same is between the same parties in that both of said suits are prosecuted on behalf of the members of said Fourth class in like situation and that with respect to the fund so alleged to have been misused said respective parties were and are in like situation, and said Supreme Lodge Knights of Pythias is defendant in both.

Wherefore, said defendant prays the Court to reopen the issues in this cause and permit this defendant to file a cross-bill herein setting up said matters. Said defendant now tenders to the Court a verified cross-bill of complaint which it proposes to file in this cause, if permitted so to do, and by reference makes the same a part hereof.

And will the Court grant such other and further relief in the premises as may be just and equitable. (Signed) J. P. Goodrich. (Signed) Miller, Shirley, Miller & Thompson, Solicitors for Defendant. (Signed) C. C. Shirley, of Counsel.

STATE OF INDIANA,

*Marion County, ss:*

Walter C. Powers, being duly sworn, upon his oath says he is the Secretary of the Insurance Department of said Defendant The Supreme Lodge Knights of Pythias; that he has read the foregoing petition and is acquainted with the contents thereof, and that the facts stated therein are true, in so far as he has personal

188 knowledge thereof, and that as to the facts stated therein of which he does not have personal knowledge, he is informed and believes them to be true. (Signed) Walter O. Powers

Subscribed and sworn to before me this 10th day of April, 1913 (Signed) Lou A. Robertson, Notary Public. [Seal.] My commission expires Nov. 26, 1916.

**NOTICE OF PETITION FOR LEAVE TO FILE CROSS-BILL.**

The complainants in the above entitled cause and their solicitors, Miller and Dowling, are each hereby notified that on Saturday, April 12th, 1913, at ten o'clock a. m., or as soon thereafter as counsel can be heard, the defendant, Supreme Lodge Knights of Pythias, will present to Honorable Albert B. Anderson, Judge of said Court, at chambers, at the City of Indianapolis, Marion County, Indiana, its petition for leave to file a cross-bill of complaint against said complainants and each of them, a copy of which petition is attached hereto.

Dated, Indianapolis, Indiana, April 10th, 1913. (Signed) J. P. Goodrich, (Signed) Miller, Shirley, Miller & Thompson, Solicitors for said Defendant.

We acknowledge service of a copy of the above and foregoing notice and a copy of the petition therein referred to, on us, this 10th day of April, 1913. (Signed) Miller and Dowling, (Signed) Lazarus, Michel & Lazarus, Solicitors for Complainants.

And afterwards, to-wit: at the November Term of said court, and on the 14th day of April, 1913, before the Honorable Albert B. Anderson, judge of said court, the following further proceedings in the above entitled cause were had, to-wit:

189 Comes now the defendant, by counsel, and by leave of Court files its Cross-Bill herein, in the words and figures following, to-wit: And the complainants are ruled to answer in ten (10) days.

**CROSS-BILL.**

The defendant, the Supreme Lodge of Pythias, by leave of Court first had and obtained, presents this its cross-complaint against the complainants Joseph Holt, Victor Mauberret, Ross Carlin, Frank Ribera, William R. Smith, John B. Chisolm, Henry A. Weber,

David Lemley, Edward F. Denechaud, James A. Douglas, Joseph E. Jolet, Moses Heidingsfelder, Thomas Carey, Louis Schreck, Philip Rahm, Joseph I. Barnett, John Leckert, T. Sidney Weber, David R. Graham, and Lewis Fishel and thereupon your orator shows unto your Honor:

**I.**

That heretofore, to-wit: on the 27th day of January, 1911, one Fritz Heimsoth, on behalf of himself and all other members of the Fourth Class of the Insurance Department (therein styled as "Endowment Rank") of the Supreme Lodge Knights of Pythias filed

120

his bill of complaint in the Circuit Court of the United States for the District of Indiana against the defendant herein, the Supreme Lodge Knights of Pythias (and others) in words and figures following, to-wit:

121

II.

That thereafter, to-wit: on the 16th day of March, 1911, said defendant, The Supreme Lodge Knights of Pythias, together with its co-defendants except Ulysses S. G. Cherry filed an answer to said bill of complaint in words and figures following, to-wit:

190 In the Circuit Court of the United States for the District of  
**Indiana.**

FRITZ HEIMSOOTH, on Behalf of Himself and All Other Members of the Fourth Class, Endowment Rank of the Supreme Lodge Knights of Pythias, Complainant,

vs.

THE SUPREME LODGE, KNIGHTS OF PYTHIAS (a Federal Corporation)  
George M. Hanson, Thomas F. Carling, Henry P. Brown, Charles F. S. Neal, U. S. G. Cherry, Charles S. Davis, William Ladew, George A. Bangs, William J. Duval, as Members of the Board of Control of the Insurance Department of the Supreme Lodge Knights of Pythias; Union B. Hunt, W. O. Powers, George G. McConnell, and Samuel O. Smart, as President, Secretary, Medical Examiner-in-Chief, and Auditor, Respectively, of the Board of Control of the Insurance Department of the Supreme Lodge Knights of Pythias, Defendants.

**ANSWER OF ALL THE DEFENDANTS EXCEPT U. S. G. CHERRY TO THE BILL OF COMPLAINT OF FRITZ HEIMSOOTH ON BEHALF OF HIMSELF AND OTHERS.**

These defendants, the Supreme Lodge Knights of Pythias, (a Federal corporation), George M. Hanson, as Supreme Chancellor of the Supreme Lodge Knights of Pythias and ex officio member of the

122

Board of Control of the Insurance Department of said The Supreme Lodge Knights of Pythias, Thomas J. Carling as Supreme Vice-Chancellor of the Supreme Lodge Knights of Pythias and ex officio member of the Board of Control, Henry P. Brown as Junior Past Supreme Chancellor of The Supreme Lodge Knights of Pythias and ex officio member of The Board of Control, Charles F. S. Neal, Charles S. Davis, William Ladew, George A. Banks, William J. Duval as members of the Board of Control, of the Insurance Department

191 of the Supreme Lodge Knights of Pythias, Union B. Hunt, W. O. Powers, George G. McConnell, and Samuel O. Smart, as President and General Counsel, Secretary, Medical Examiner in Chief, and Auditor respectively of the Board of Control of the Insurance Department of The Supreme Lodge Knights of Pythias, now and at all times hereafter saving to themselves all and all manner of benefit of exception or otherwise that can or may be had or taken to the many errors, uncertainties and imperfections in the said bill of complaint contained, for answer thereto or to so much thereof as these defendants are advised it is material or necessary for them to make answer to, answering say:

## I.

Said defendants, upon information and belief, admit the facts to be true as stated in Paragraphs 1, 2, 3, 4 and 5 of said bill of complaint.

## II.

Said defendants admit the facts to be true as stated in the sixth paragraph of said bill of complaint, except as to the allegation that in 1877, said The Supreme Lodge Knights of Pythias created within its membership a mutual, fraternal, insurance society, known as the Endowment Rank, which allegation the defendants deny. As to such allegation said defendants say that it is true that in 1877 there was organized and established by the defendant The Supreme Lodge

## 123

Knights of Pythias and among the members of the order of Knights of Pythias said Endowment Rank, consisting of such members as desired to avail themselves of the mutual insurance privileges accorded by said Supreme Lodge to the members of the Rank.

## III.

Said defendants admit, as alleged in Paragraph 7 of said bill of complaint, that in 1884 said The Supreme Lodge Knights of Pythias created a Fourth Class, known as the "Fourth Class" of the said Endowment Rank, and said defendants aver that within a few years thereafter the Third Class of said Endowment Rank became extinct but that said First and Second Classes continued in existence  
192 with a gradually reduced membership until the present time; and that there are now four members of said First Class and four members of said Second Class.

Said defendants deny that the membership of said Fourth Class has at any time constituted said Endowment Rank but aver that from and after the extinction of said Third Class said Endowment Rank consisted of said First, Second and Fourth Classes.

## IV.

Said defendants admit the facts stated in Paragraph 8 of said bill of complaint to be true as therein stated.

## V.

Said defendants admit the facts stated in Paragraph 9 of said bill of complaint to be true as therein stated, except as to the allegation that eighty-four thousand, two hundred eighty-five members of the Fourth Class remained in good standing with their certificates in full force and effect on the 1st day of January, 1907, and that the total fact amount of insurance represented by said certificates then in force

## 124

was about one Hundred Twenty-eight Million, Nine Hundred Forty-six Thousand, Five Hundred Dollars (\$128,946,500), which allegation said defendants deny. Said defendants aver that only eighty-one thousand, eight hundred nineteen members of said Fourth Class remained in good standing on the 1st day of January, 1907, and that the total face amount of insurance represented by their certificates was One Hundred Twenty-five Million, Four Hundred Forty-one Thousand Dollars (\$125,441,00-).

Said defendants admit the facts stated in paragraph 10 of said bill of complaint to be true as therein stated, except in so far as the creation of the Fifth Class of said Endowment Rank is characterized and described by said complaint as "pretended" creation and except as to so much of said paragraph as characterizes said Fifth Class as a "pretended" Fifth Class; and except as said complaints in said  
 193 paragraph, by innuendo or otherwise, have questioned the regularity and good faith of the proceedings of said Supreme Lodge Knights of Pythias under which said Fifth Class was created; and as to such characterization or attempted characterization said defendants aver that said Fifth Class was duly and regularly created by said Supreme Lodge Knights of Pythias, as is more fully hereafter set forth.

## VII.

Said defendants admit that on the 1st day of January 1907, when said Fifth Class began operations, the then Board of Control had no assets in its possession contributed by said Fifth Class.

But said defendants aver that a very large portion of the assets in the possession of said Board of Control comprising said expense fund

## 125

on said 1st day of January, 1907, was contributed by the members of said Endowment Rank who, on or after January 1st, 1907, became members of said Fifth Class.

Said defendants admit that on said date, to-wit, January 1st, 1907, said Board of Control had in its possession money, bonds, mortgages and other property derived from assessments of the value and amount

stated by said complainant in said paragraph 11, and that of said sum \$394,082.25 constituted the expense fund; but said defendant denies that said entire sum was contributed by said Fourth Class and avers the fact to be that said sum was contributed by the members of Classes 1, 2 and 4, many of whom, on and after January 1st, 1907, became and are now members of said Fifth Class by transfer from said Classes, One, Two, and Four to said Fifth Class.

Said defendants admit, as alleged in said Paragraph 11, that on or about said 1st day of January, 1907, said Board of Control ceased to make any effort to secure members in said Fourth Class and that it has not since said date made any effort to secure such members of said Fourth Class to surrender their certificates therein and transfer to and become members of said Fifth Class, and to that end has from time to time during said period sent circular letters to the members of said Fourth Class advising such transfer.

194 Said defendants further admit that during said period from January 1st, 1907, to the present time said Board of Control has from time to time employed persons to visit the members of said Fourth Class for the purpose of inducing them to transfer their membership to said Fifth Class, and that said Fifth Class has been extensively advertised through literature sent during said period to the

## 126

members of said Fourth Class advising them to become members of said Fifth Class.

But said defendants deny the employment of said agents to procure new members of said Fifth Class except in the organization and building up of subordinate bodies of said Insurance Department of said defendant Supreme Lodge Knights of Pythias.

Said defendants deny that by reason of all efforts having ceased to procure new members of said Fourth Class the expense of managing said Fourth Class has been greatly reduced or that said expense of management has been small as compared with the usual and ordinary expense of maintaining such societies or seeking new members, and deny that the expense of managing said Fifth Class has been large or in excess of the usual expense of managing benefit societies; and they further deny that in order to meet the expenses of managing and building up said Fifth Class the Board of Control used the expense fund contributed solely by the members of said Fourth Class, but said defendants aver that the expense fund used in managing the building up of said Fifth Class was derived from contributions by members of all classes transferred from said Fourth Class and including contributions from all new members of said Fifth Class as and after they entered said Class.

Said defendants aver that since January 1st, 1907, the actual cost of managing said Fourth Class has been unusually high and in excess of the usual and ordinary expense required to manage such associations for the reason that during all of said period down  
195 to the 1st day of January, 1911, its financial condition was weak and its assets inadequate, its death loss and the expense



incident thereto was excessive, and by reason of the expense incurred in advising the members of said Fourth Class of the weak and precarious financial condition of the same and devising a practicable method of remedying such condition.

127

Defendants further aver that if said great and extraordinary effort and expense had not been made and incurred in maintaining the credit and devising means to remedy the financial condition of said Fourth Class, the same would have become wholly insolvent and unable to meet its death losses as they occurred long prior to January 1st, 1911.

Said defendants further aver that a large portion of the expense charges by said complainant in said Paragraph 11 to have been incurred in managing said Fifth Class was in fact incurred and made necessary by the transfer of members from said Fourth Class to said Fifth Class, a large portion of which transferred members were impaired in health, thereby greatly increasing the death rate of said Fifth Class membership beyond that pertaining to the new members of said Class and also greatly benefiting said Fourth Class members who did not transfer to said Fifth Class by relieving said Fourth Class of said death losses and expense incident thereto.

Said defendants aver that the expense of managing said Fifth Class during the entire period of its existence has been only such as is usual and ordinary, incident to the management of a benefit society.

Said defendants deny the allegation of said Paragraph 11, to the effect that from and after January 1st, 1907, to June 30th, 1910, the sum of \$567,896.60 was expended in paying expenses exclusively for the benefit of said Fifth Class, and they further deny that more than half of said sum of \$73,745.20 alleged to have been expended for officers' salaries, was paid out for the benefit of said Fifth Class; that more than half of said sum of \$173,841.54 mentioned in said Paragraph was expended for the benefit of said Fifth Class; that nearly all of said sum of \$37,507.37, alleged to have been paid for traveling expenses was expended for the

128

benefit of said Fifth Class; said defendants further deny that more than half of said \$3,354.55 was expended for the benefit of said Fifth Class in paying Insurance Department fees; that more than half of said \$20,525.53 alleged to have been paid for rent, was so paid for the benefit of said Fifth Class; that nearly all of said \$56,630.26, alleged to have been expended for advertising, printing and stationery, was expended for the benefit of said Fifth Class; that nearly all of said \$37,855.59, alleged to have been expended for postage, express, telegraph and telephone service, was expended for the benefit of the Fifth Class; that more than half of said \$16,762.28, alleged to have been expended for official publication, was so expended for the benefit of said Fifth Class; that more than

half of said \$20,602.32, alleged to have been expended for legal expenses was paid and expended for the benefit of said Fifth Class; that more than half of said \$5,705.82, alleged to have been paid for taxes and real estate expenses, was paid and expended for the benefit of said Fifth Class; that more than half of said \$9,451.25, alleged to have been paid for actuary expense, was paid for the benefit of said Fifth Class; that more than half of said Supreme Lodge expense of \$1,183.08 was incurred for the benefit of said Fifth Class; that more than half of said miscellaneous expense of \$8,412.57 was incurred for the benefit of said Fifth Class; that all of said \$8,938.00, alleged to have been expended for superintendents' salaries, was paid out for the benefit of said Fifth Class; that more than half of said \$20,171.70 alleged to have been paid out for auditing expenses, was incurred and paid for the benefit of said Fifth Class.

197 Said defendants further deny that more than three-fourths of \$1,576,184.89, alleged to have been paid for expenses of administering said Insurance Department, was paid out and expended for the benefit of said Fifth Class, and deny that less than

## 129

one-fourth thereof was expended for the benefit of said Fourth Class; they deny that during said period said Fourth Class members contributed to said expense fund more than one-half of the total sum disbursed during said period, and deny that said Fifth Class members contributed to said fund less than one-half of said total sum; said defendants deny that the total sum disbursed during said period for the benefit of said Fifth Class exceeded the sum contributed by said Fifth Class to said expense fund more than \$394,082.25.

Said defendants aver that a large portion, to-wit, the sum of \$— of said \$567,896.60, alleged to have been expended as salaries and commissions to agents in transferring members from said Fourth Class to said Fifth Class, was so expended wholly for the benefit of said Fourth Class; that said sum of \$73,745.20, expended for officers' salaries, was not substantially in excess of the sum which would have been necessarily expended, if said Fifth Class had not been organized, and that the services of said officers during said period were given almost wholly to matters pertaining to the administration of said Fourth Class; that said traveling expenses of \$37,507.37 were nearly all incurred for the benefit of said Fourth Class; that said Insurance Department fees of \$3,354.55 would have been precisely the same, if said Fifth Class had not been organized, said fees representing the sums of money required to be paid to the several state Insurance Departments for allowances and other fees and charges in order that the business of the Insurance Department might be conducted in the several states; that the expenses on account of rent were not substantially increased by the organization of said Fifth Class, and that said sum paid out during said period on that account to-wit, the sum of \$20,525.53, would have been necessarily paid out if said Fifth Class had not been organized; that approximately three-fourths of said sum of \$56,630.26, alleged to have been expended for advertising, printing and

stationery, was expended for the benefit of said Fourth Class members; that fully two-thirds of \$37,855.59, alleged to have been expended for postage, express, telegraph and telephone service, was paid out and expended with and for the benefit of the affairs of said Fourth Class; that said sums of \$16,762.28, alleged to have been expended for official publication, and \$20,502.32, alleged to have been paid out for legal expenses, were almost wholly, if not wholly, necessarily incurred, paid out and expended on behalf of and for the benefit of said Fourth Class; that all real estate owned by said Insurance Department belongs to said Fourth Class and therefore, said sum of \$5,705.82, alleged to have been expended for taxes and other real estate charges, was paid out and expended for the benefit of said Fourth Class; that at least half of said \$9,451.25, alleged to have been paid for actuary expenses, was paid for the benefit of said Fourth Class; that no part of said Supreme Lodge expense, amounting to \$1,183.08, was made necessary by the organization or maintenance of said Fifth Class; that the same expense would have necessarily been incurred and paid, if said Fifth Class had not been organized, and that at least half of the same was incurred for the benefit of said Fourth Class; that at least half of said sum of \$8,412.57, miscellaneous expense was incurred and paid on behalf of said Fourth Class, and that substantially said entire amount would have necessarily been incurred and paid, if said Fifth Class had not been organized; that at least two-thirds of said \$20,171.70, alleged to have been paid for examination and auditing expenses was paid and expended for the benefit of said Fourth Class.

199 Said defendants aver that it is wholly impossible to sep-

## 131

rate and distribute with exactness the respective portions of the several expense items above mentioned between said Fourth and Fifth Classes of said Insurance Department because of the fact that within the Insurance Department of the defendant The Supreme Lodge Knights of Pythias, during all of the time from January 1st, 1907, to date an insurance business conducted in two separate classes has been carried on and conducted by the same officers, in the same general way, with members belonging to both classes at the same time, and items of expense have been incurred for services rendered both classes; that in so far as the defendants have attempted to separate and apportion said several items of expense, as hereinbefore set forth, no specific or exact data has been available, for the reason that all of said items of expense have been paid out of one single expense fund, and that no separate system of bookkeeping has been used to designate the portion of such expense chargeable to each class or to any of the members thereof, and said apportionment made by defendants, therefore, necessarily represents only an approximately accurate division derived from the best sources of information available.

Said defendants admit the truth of all facts alleged in said paragraph 11 of said bill of complaint not hereinbefore specifically de-

nied, substantially as therein pleaded, except in further allegation of said Paragraph 11 to the effect that said Fourth Class had eighty-four thousand, two hundred eighty-five members on the 31st day of December, 1906, the correct number on said date being eighty-one thousand, eight hundred nineteen, as hereinbefore alleged; and except the allegation of said Paragraph 11 to the effect that the Board of Control and the members thereof are threatening to manage and pay out the funds of said Fourth Class for the benefit of said Fifth Class, which allegation these defendants deny, and on the contrary aver that it is their purpose to manage said Fourth Class in the

132

200 interests of the members thereof and their beneficiaries.

## VIII.

Said defendants admit the facts stated in the twelfth paragraph of said bill of complaint except the allegation to the effect that there are now or were when said bill of complaint was filed, about eleven thousand members of said Fourth Class, which allegation said defendants deny, and they aver the fact to be that on the 4th day of March, 1911, said entire membership of said Fourth Class was constituted of thirty-two hundred, seventy-eight persons only, and they further aver that on the date when said bill was filed, said membership was approximately four thousand.

## IX.

Said defendants admit that for a long time prior to January 1st, 1911, the funds of said Fourth Class had been greatly depleted and reduced, but they deny that said depleted and reduced condition of the funds of said Fourth Class were due to the expenditures of any portion thereof for the benefit of the Fifth Class or any class other than the Fourth Class, and further aver that notwithstanding said reduced and depleted condition of said funds of said Fourth Class said defendants The Supreme Lodge Knights of Pythias have at all times been able to meet and have met all death losses chargeable to said funds as they occurred; and further aver that said depleted and reduced condition of the funds of said Fourth Class were solely due to the inadequate premiums paid by the members thereof to meet the death losses of said members as they occurred.

Said defendants aver the fact to be that ever since the organization of said Fourth Class the rates of insurance charged the members of said Class have been grossly insufficient to meet said death losses and retain a safe and adequate mortuary fund and grossly in-

133

sufficient according to any known insurance system to pay the actual and reasonable cost of carrying the insurance of the members of said Class.

201 Said defendants admit that said Supreme Lodge Knights of Pythias at its last biennial convention, held in the City of Milwaukee, Wisconsin, in August, 1910, passed a law rerating all members of said Fourth Class as of their then attained age and increasing their assessments according to a table set forth in said law so that the members of said Fourth Class were and are required to pay from two to five times as much per month as they had heretofore paid, and that said law went into effect on the 1st day of January, 1911; but said defendants deny that said law was made necessary largely or at all because of funds of said Fourth Class being paid out and expended for the benefit of said Fifth Class and deny that any funds of said Fourth Class were paid out and expended for the benefit of said Fifth Class; but aver the fact to be that said revision of rates of said Fourth Class was necessary in order to prevent the insolvency of said Fourth Class and further aver that any lower revised rate than that actually adopted and put into effect would have been insufficient and inadequate to pay for the insurance carried by the respective members of said Fourth Class and would have been insufficient and inadequate to prevent the exhaustion of the mortuary fund of said Fourth Class within a short time thereafter.

Said defendants further aver that it would have been necessary to increase the rates of insurance of said members of said Fourth Class to as great or greater an extent than the same were increased by said legislation of August, 1910, if said Fifth Class had never been organized and if the efforts to secure new members to said Fourth Class had been continuously and energetically prosecuted; that the reduced and depleted condition of said Fourth Class mortuary fund and the threatened insolvency of said Fourth Class was

134

due wholly and solely to the fact that the insurance rates paid by the members thereof since the organization of said Fourth Class had been grossly and notoriously inadequate under any known

202 system of insurance to carry the risks of said members and provide a fund to meet death losses as they occurred; and that the advancing age of said members of said Fourth Class had so increased that said mortuary fund would have been exhausted long before the filing of said bill of complaint, if it had not been for the transfer of members from said Fourth Class to said Fifth Class and the consequent reduction of death losses chargeable to said Fourth Class mortuary fund together with said increase of rates so adopted; and that it had become and was impossible to maintain said Fourth Class mortuary fund by special assessments levied against the members thereof or by any other method than that adopted by said Supreme Lodge Knights of Pythias in August, 1910.

Said defendants admit that prior to January 1st, 1911, the assets in the hands of said Board of Control belonging to said Fourth Class did not equal its insurance liabilities, but aver that on and subsequent to January 1st, 1911, by reason of said increased rates

and greatly augmented income in proportion to the number of members remaining in good standing in said Fourth Class, its assets have been and are sufficient to meet all death losses and other liabilities as the same accrue.

## X.

Said defendants admit the facts to be true as pleaded in said fourteenth paragraph of said bill of complaint except the allegation of said paragraph that the sums accumulated as surplus or repaid to the members of said Fifth Class should, in good conscience, be paid over to the members of said Fourth Class or that any part of said

## 135

surplus or returned premiums or waived assessments accruing to said Fifth Class should be used to pay to said Fourth Class any money alleged to belong in equity to said Fourth Class or to be due from said Fifth Class to said Fourth Class.

203 Said defendants aver that said surplus earnings of said Fifth Class, including any amounts returned to said members, any premiums waived in favor of the members of said Fifth Class, were earned and made possible solely because the rates of insurance paid by the members of said Fifth Class have been adequate to maintain its mortuary fund so as to meet all obligations accruing against it, and leave, after the return of such premiums and waiver of such assessments, a reserve sufficient to meet future liabilities as they shall hereafter accrue, and not because any sums whatever properly belonging to said Fourth Class have been diverted to or used by said defendant Supreme Lodge Knights of Pythias for the benefit of said Fifth Class.

## XI.

Said defendants deny that said complainant and his fellow-members of the Fourth Class were in ignorance of the manner in which the expense fund of said Insurance Department of said defendant Supreme Lodge Knights of Pythias has been administered until about the time said bill of complaint was filed or within thirty days thereof, as alleged in the fifteenth paragraph of said bill of complaint, and deny that they never consented to the manner in which said expense fund has been administered and applied.

On the contrary, said defendants aver that full publicity was made and given in 1906, when said Fifth Class was established, of each and every provision of its laws designated, intended and enacted for the government of said Insurance Department through all the

## 136

subordinate divisions and local organizations of said Insurance Department and among the members thereof including the members of said Fourth Class, and that at no time since the organization of said Insurance Department has there been any fund maintained

other than a single expense fund from which all items of expense properly chargeable to any of said classes of insurance were  
 204 paid, all of which facts were well known to said complainant and his fellow members of said Fourth Class for the benefit of whom he assumes to prosecute this suit.

That since the organization of said Fifth Class, in 1906, and its active business operation, dating from the 1st day of January, 1907, from time to time at frequent intervals said defendant Supreme Lodge Knights of Pythias through its said Insurance Department has promulgated through all its said subordinate divisions and local organizations and among the respective members thereof full, definite and comprehensive information touching the operations of said Insurance Department and the several classes thereof, including the method of administering said expense fund; and that said complainant and his said fellow members of said Fourth Class enjoyed the benefits and protection afforded by their respective certificates of insurance in said Fourth Class with full knowledge that all expenses of administering said Insurance Department were paid out of said single expense fund, and have especially known since the 1st day of January, 1907, that said Insurance Department maintained only a single expense fund out of which common fund the expenses of all said classes of insurance were necessarily met; that said complainant Heimsoth at no time prior to January 1st, 1911, made any objection to the manner in which said expense fund was administered nor to the action of said Insurance Department in soliciting members of said Fourth Class to transfer to said Fifth Class, but during all of said period has acquiesced in the management of said Insurance Department with respect to all other acts of said defendant Supreme Lodge Knights of Pythias pertaining to said Insurance Department.

## XII.

Said defendants admit, as charged in the sixteenth paragraph of said bill of complaint that in the month of October, 1909, the headquarters and principal offices of the Board of Control of said Insurance Department were by resolution of said Board established in the

205 City of Indianapolis, and that the same have ever since been and are now maintained in said City and within the jurisdiction of this Court; that said Board of Control has in its possession at said headquarters assets of the value of approximately \$3,200,000; and that at the time said bill of complaint was filed said assets consisted of the various items as stated in said sixteenth paragraph of said complaint, which items, however, except real estate, vary slightly from day to day.

That said cash funds are kept in banks in the City of Indianapolis, within the jurisdiction of said Court, and that the expense fund of said Department amounted approximately, when said bill was filed, to the sum of \$385,000; that at said time said mortuary fund of said Fourth Class amounted to approximately \$600,000 which is set apart and maintained as a separate mortuary fund for said Class,



and that said Fifth Class mortuary fund amounted at said time to approximately \$2,000,000, all of which sume, however, vary from day to day according to the respective receipts and disbursements belonging to or properly chargeable against each of said funds.

Said defendants deny that if the money now on hand in the expense fund of said Insurance Department was divided by giving to said Fourth Class the portion thereof contributed by the mem-

138

bers thereof and to the Fifth Class the portion contributed by the members of said Fifth Class, there would be on hands in the Board of Control as property of said Fourth Class a sum exceeding \$1,000,000 said defendants deny that said mortuary fund now held as the mortuary fund of said Fifth Class is more than \$394,082.25, or any other sum in excess of what it would be if all the disbursements of said Fifth Class had been paid out of the moneys paid to said Board of Control by the members of said Fifth Class.

And said defendants aver on the contrary that if a separate account had been kept of all receipts and disbursements paid into and expended from said expense fund on behalf of each of said

Fourth and Fifth Classes, a very small fraction of said \$394,082.25 could properly be credited to said Fourth Class; but

that said defendants are unable to state the exact amount, if anything, that would belong to said Fourth Class under a fair and accurate apportionment, for the reason, as above stated, that separate accounts have not been kept nor has it been possible accurately to keep separate accounts of expenditures made from said fund for the benefit of said respective classes.

Defendants deny that more than \$394,082.25 of the money and property of said Fourth Class has been mingled by said Board of Control with the money and property of said Fifth Class, except as said common expense fund has been maintained, and deny that any other sum whatever or property belonging to said Fourth Class has been mingled by said Board of Control with the money or property of said Fifth Class, and deny that any advantage whatever has accrued to the members of said Fifth Class or any loss or disadvantage has been sustained by said Fourth Class or the members thereof by reason of the manner in which said common expense fund has been administered; but aver, on the contrary, that said Fourth Class

139

and the members thereof have greatly benefited by reason of the maintenance of said expense fund in common and by reason of the greater drafts made on said expense fund for the support and benefit of said Fourth Class.

Said defendants deny that said complainants or the members of said Fourth Class have any lien in equity upon any of the property or assets of said Fifth Class or that they are entitled to any part of said expense fund other than such as has been, is being and may hereafter be required to meet the ordinary and proper expenses of

managing said Fourth Class, and said defendants aver that it is their purpose and has always been their purpose to pay out of said common expense fund whatever reasonable, property and necessary charges may be incurred in the administration of said Fourth Class.

Said defendants admit that the property of said Insurance Department described in said Paragraph 16 is and has been during the time therein alleged in the possession of said defendants  
 207 Union B. Hunt, W. O. Powers and Samuel O. Smart, as President, Secretary and Auditor respectively of said Board of Control, and that the actual management, disposition and control of said property is with the said last named defendants, subject, however, to the control and direction of said Board of Control, which, as alleged in said sixteenth paragraph of said bill, convenes about four times each year.

### XIII.

Said defendants admit, as alleged in the seventeenth paragraph of said bill of complaint that none of the officers of the said The Supreme Lodge Knights of Pythias and none of the members of its Board of Control of said Insurance Department reside within the District of Columbia; that none of the property of said Insurance

140

Department is kept within the District of Columbia; that neither the said Supreme Lodge Knights of Pythias nor the said Insurance Department maintain any office within the District of Columbia for the transaction of the general business of the said Supreme Lodge Knights of Pythias, or the Insurance Department thereof; and so far as these defendants are advised, that service of process cannot be had upon any of said defendants and could not have been had upon any of said defendants, if complainant's action had been brought in the District of Columbia, but as to whether or not such service might be had and as to whether or not a decree might or could be entered or enforced by the Courts of said District of Columbia in any action brought therein of like character to that instituted by said complainants in their said bill of complaint these defendants are not sufficiently advised to enable them to state, and they, therefore, neither admit nor deny said averments of Paragraph 17, of said bill of complaint.

### XIV.

Said defendants admit that within two months from the  
 208 1st day of January, 1907, and before more than \$25,000 of the money then in the expense fund of said Insurance Department had been expended, the receipts from said Fifth Class members were and continued to be in excess of the disbursements by said Board of Control on behalf of said Fifth Class, and admit that ever since about March 1st, 1907, said Board of Control has had on hand money and property contributed by said Fifth Class

members more than sufficient to meet the disbursements of said Fifth Class; but said defendants deny that any portion of the funds belonging to said Fourth Class were expended for the benefit of said Fifth Class or the members thereof after said 1st day of March, 1907, but aver that at all times the expenditures made on behalf and for the benefit of said Fifth Class were less than the receipts

141

from said Fifth Class members; and as to any expenditures made prior to March 1st, 1907, said defendants aver that all such expenditures made on behalf of said Fifth Class were properly made out of said common expense fund as aforesaid; and that the contributions of said Fifth Class members to said common expense fund from and after the same became self-sustaining have been so much in excess of the expense of administering said Fifth Class, and the expenses of said Fourth Class so much greater than the contributions thereafter received from its members to said expense fund, all as herein set forth, that any temporary disadvantage or loss which may have been sustained by said Fourth Class members through the method employed in maintaining and disbursing said common expense fund was vastly more than compensated and restored to said Fourth Class from the contributions of said Fifth Class members to said common fund and the withdrawal therefrom of sums expended for the benefit of said Fourth Class long before the filing of complainant's said bill of complaint.

## XV.

Said defendants admit that, as alleged in Paragraph 20 of said bill of complaint, at the twenty-sixth biennial convention of  
 209 said defendant The Supreme Lodge Knights of Pythias, held in the City of Milwaukee, Wisconsin, on the 2nd to 11th days of August, 1910, resolution was offered by a duly elected, qualified and acting Supreme Representative to said convention that \$394,-082.25 be returned to the expense fund of said Fourth Class, and that said resolution was submitted to a vote of said convention then in session and failed to carry by a vote of one hundred ten nays to thirty-four yeas; but said defendants deny each and every allegation, inference and innuendo of said Paragraph 20 of said bill of complaint to the effect that any sum or sums of money had been

142

used by said Board of Control for the benefit of said Fifth Class except as herein stated or that any money or property was due from said Fifth Class to said Fourth Class or any fund thereof.

Said defendants admit that said Supreme Lodge Knights of Pythias will not again convene for a period of two years from the month of August, 1910; and said defendants further admit that, as alleged in Paragraph 21 of said bill of complaint, said complainant Heimsoth made a demand on said Board of Control that it forthwith separate said expense fund then on hand, placing in one fund the

portion thereof contributed by said Fourth Class and in another fund the portion thereof contributed by said Fifth Class, and that it render to him for the benefit of the other members of said Fourth Class an account as to the total sum paid out of said Fourth Class for the benefit of said Fifth Class, and place said sum in said Fourth Class funds, and that it refrain thereafter from mingling the funds of said Fourth Class with the funds of said Fifth Class, which demand and each and every part thereof was refused by said Board of Control.

Said defendants further admit that said complainant Heimsoth was a member of said Fourth Class during all the time that the several transactions complained of in said bill of complaint  
 210 are alleged to have occurred; but said defendants are not sufficiently advised to enable them to state whether or not said complainant's suit is collusive for the purpose of conferring upon a Court of the United States jurisdiction of a case of which it would not otherwise have cognizance, and therefore neither admit nor deny any allegation of said bill of complaint concerning said matter.

### XVI.

Said defendants admit that said Board of Control and the mem-

### 143

bers thereof have claimed and do claim that their action in maintaining a single expense fund arising from the contributions of members of said Fourth and Fifth Classes and in paying out of said common fund the legitimate expenses of said Insurance Department is fully authorized and justified by Section 16 of Chapter 8 of said legislation of 1908 set forth in Exhibit A at page 95 of complainant's said bill of complaint, but said defendants deny that said section or any part thereof is unreasonable, confiscatory or void, and deny that authority for the manner in which said common expense fund has been maintained and administered is based exclusively on said Sec. 16, but aver the fact to be that from the time said Endowment Rank was organized in 1877, until the present time the laws of said defendant have confided to its governing body the right to provide for the payment of the legitimate expenses of said Endowment Rank (now said Insurance Department) by contributions to a common expense fund from the members of the various classes established from time to time, and that at no time since 1892 has there been any separate expense fund maintained or in existence for any class of said Insurance Department, but that since said date all expenses of said Insurance Department have been paid with the full knowledge, acquiescence and consent of all members thereof from a common fund to which all members have contributed; and that the various laws theretofore enacted by said Supreme Lodge Knights of Pythias and in force during said period have fully authorized said proceedings.

211 Said defendants aver that said method of maintaining and administering said expense fund so complained of in said bill

of complaint is reasonable and fair to the members of said Insurance Department and especially to the members of said Fourth Class; that the same is fully authorized by the charter of said Supreme Lodge Knights of Pythias, and is not in conflict therewith and does not

144

operate so as to take the funds of any one class and use the same for the benefit of another class and is not a taking of the property of any member of either class without due process of law, and is not in violation of the Fifth nor the Fourteenth amendment to the Federal Constitution.

Said defendants further aver that said method of maintaining and administering said expense fund so complained of is the most practical method which, in view of the character and purposes of said Insurance Department, has been or can be devised; that said method of maintaining and administering said expense fund has been greatly beneficial to said Fourth Class members, including complainant, all as hereinafter more particularly set forth.

Said defendants admit that the average age of those who remain in said Fourth Class is somewhat greater than the average age said Fourth Class members would have been if none had transferred to said Fifth Class and if efforts to secure new members of said Fourth Class had not been discontinued, but said defendants aver that whatever proportionate increased death losses have fallen or will fall upon the members of said Fourth Class who have not transferred is more than offset and compensated for by the withdrawal of the great body of said Fourth Class membership and their transfer to said Fifth Class, each and every one of which members surrendered upon his said withdrawal to the remaining members of said Fourth Class his interest of equity in the mortuary fund of said Fourth Class and

212 at the same time relieved said Fourth Class mortuary fund from the enormous insurance liability to the members so withdrawing whose contributions to said fund were greatly smaller than the cost of carrying their said insurance, as hereinafter more particularly averred.

Said defendants further aver that on December 31st, 1906, the

145

total sum comprising the expense fund of the Endowment Rank, including the several Classes thereof then in existence amounted to \$394,082.25; and that the name "Endowment Rank" by which said several classes were theretofore known was changed by said Supreme Lodge Knights of Pythias in 1906 to "Insurance Department" by which name it has since been and is now known.

That said Fifth Class of said Insurance Department was created in 1906 and installed January 1st, 1907, for the sole purpose of enabling said society to meet its obligations and by permitting and inducing members of said Fourth Class voluntarily to transfer to said Fifth Class, and by increasing their contributions both to the mortuary and expense funds of said Department create and maintain

a sufficient reserve to meet the then present and future obligations of said class as they should mature, thereby relieving said Fourth Class of the burden of meeting its rapidly maturing death losses due to the increased age of its members, which death losses at that time threatened to and would, in a short time, have exhausted the entire mortuary fund of said Fourth Class but for said system of voluntary transfers provided for by said legislation of 1906 and the subsequent efforts of said Board of Control and officers of said Insurance Department to induce the members of said Fourth Class to avail themselves of the opportunity afforded by the organization of said Fifth Class; that on and after the 1st day of January, 1907, when said Fifth Class began operations as aforesaid, the members of said Fourth Class began to and did transfer in great numbers to said Fifth Class and have continued to transfer in large numbers to said Fifth Class until the 1st day of January, 1911.

213 That among the provisions made by the law enacted in 1906 by said Supreme Lodge Knights of Pythias the mem-

## 146

bers of said Fourth Class were permitted to and did transfer to said Fifth Class without medical examination and regardless of age, and that between the 1st day of January, 1907, and the 1st day of January, 1911, fifty-five thousand four hundred twenty-five members of said Fourth Class, carrying insurance amounting to \$81,401 500.00, actually transferred from said Fourth Class to said Fifth Class; and that during said four years there was paid out of the Fifth Class mortuary funds to beneficiaries of members transferred from said Fourth Class to said Fifth Class, and who died during said period, the sum of \$1,984,985.51, all of which sum would have become a charge against said Fourth Class mortuary fund if said Fifth Class had not been organized and opportunity afforded the members of said Fourth Class to transfer thereto in accordance with the legislation of 1906, referred to in said bill of complaint, which sum would have been vastly in excess of the total contributions of all members who transferred from said Fourth Class to said Fifth Class to the mortuary fund of said Fourth Class, if they had continued members of said Fourth Class until the 1st day of January, 1911, and that in truth and in fact the mortuary fund of said Fourth Class would have been exhausted and said Fourth Class would have been rendered totally insolvent long before January 1st, 1911, if said transfers had not been effected.

That the total death losses accruing by reason of the death of new members received into the Fifth Class during said four year period beginning January 1st, 1907, and ending January 1st, 1911, amounted to \$297,825.78 only; that under the conditions annexed to the transfer of membership from said Fourth Class to said Fifth Class and under which all such transfers were actually made, said Fourth Class members so transferring relinquished whatever claim or equity they had in the funds belonging to said Fourth Class mortuary fund, which amounted on the 31st day of December, 1906,



214

147

to \$1,189,277.53, in consequence of which the per capita interest remaining to the members of said Fourth Class who did not transfer was greatly increased; that said members so transferring did not, however, relinquish any rights or equities belonging to them to and in the common expense fund of said Insurance Department to which they, in common with those who declined to avail themselves of the right to transfer to said Fifth Class, had contributed; and that the amount actually contributed to said expense fund by the members of said Fifth Class who formerly were members of said Fourth Class is many times greater than the amount contributed to said expense fund by those who remain in the Fourth Class.

That the total amount contributed to said expense fund by those who were members of said Fourth Class when such contributions were made, during said four year period following the establishment of said Fifth Class, amounted to less than \$700,000, while the contributions of members of the Fifth Class during the same period exceeded \$1,000,000, not counting any of the contributions made by persons who are now members of the Fifth Class during their membership in the Fourth Class; that much more than half of the expense of operating said Insurance Department since the Fifth Class was established has been incurred through the efforts of said Board of Control and officers of said Insurance Department to improve the financial condition of said Fourth Class and avert its threatened insolvency, and that said efforts have in fact so resulted, as hereinbefore alleged; and that by reason of said voluntary transfers so induced said Fourth Class has been relieved of more than \$1,000,000,000 of liabilities, a sum much larger proportionately than any diminution either of the mortuary fund of said Fourth Class or of the common

148

expense fund, by reason of the establishment of said Fifth Class and the operation of the same.

215 Said defendants further aver that said Supreme Lodge Knights of Pythias is a fraternal, beneficial society, and that the same was organized and its affairs, including said Insurance Department, have always been managed and conducted for the sole benefit of its members and their beneficiaries and not for profit.

That among its beneficial purposes is one under which provision for the payment of benefits is made upon the death of its insured members, such payment, however, in all cases being subject to the members' compliance with the laws of said defendant; that all said benefits as well as all expenses of said defendant are defrayed and always have been defrayed from funds derived from dues and assessments collected from its members; that no persons are admitted to the insurance privileges of said defendant Supreme Lodge Knights of Pythias who are not members of said society, and that its benefits are paid upon the death of its members and can, under its laws, only be paid to the families, heirs, blood relatives, affianced wife or dependents of such deceased member.



That the membership of said society now aggregates more than seven hundred thousand persons, all of whom are members of subordinate lodges, which, in the aggregate, exceed seven thousand in number; that by vote of all the members in the subordinate lodges representatives from their number are elected to the grand lodges of said defendant society, which grand lodges aggregate in number more than fifty; that each subordinate lodge is entitled to at least one representative to the grand lodge, and that each grand lodge is entitled to elect and does elect from its membership at least two representatives to said Supreme Lodge Knights of Pythias; that

## 149

among the charter powers of said defendant is that set forth in Paragraph 2 of said bill of complaint as follows:

216 "That the said Supreme Lodge shall have power to establish the Uniform Rank and the Endowment Rank upon such terms and conditions and governed by such rules and regulations as to the Supreme Lodge may seem proper."

That under said charter and by reason of the nature and character of said defendant Supreme Lodge Knights of Pythias it has and has always exercised full power to make, alter and change from time to time as occasion required such laws, rules and regulations as it deemed proper and necessary for carrying on its business affairs; and that it has always had and exercised from time to time the power to make the same applicable to all of its members in order to insure perfect mutuality of interest among them.

That acting under its powers so existing, said defendant Supreme Lodge Knights of Pythias, has since the organization of said Endowment Rank (now Insurance Department) required all members to agree in writing, when applying for membership of said Insurance Department, to be bound and controlled by the laws of said society then in force and such laws as might thereafter be enacted for the government of the members of said Department and further agree that their respective insurance contracts shall be controlled by the laws in force when the same were issued and by such laws as might thereafter be enacted, and such regulations as might thereafter from time to time be adopted by the properly constituted authorities of said Insurance Department or by said complainant Heimsoth and each of those for whose benefit he sues in this action contains upon its face an express provision in substance and to the effect that the holder thereof, by accepting the same, agrees to be bound by such laws and regulations touching the government of said Insurance Department.

## 150

ment as may thereafter be adopted, and that his said contract of insurance should be subject thereto.

Defendants further aver that by the rules, regulations and statutes in force on and prior to July 1st, 1892, it was the duty of the Board of Control of said Endowment Rank, (now Insurance Department)

ment) to report to said defendants, Supreme Lodge Knights of Pythias, at its biennial session, the condition of all funds belonging to said Department and the manner in which the same were managed and controlled; and that at said biennial meeting of said Supreme Lodge in 1892, said Board of Control, as required by law, did report in detail the condition of said fund, including the mortuary fund and expense fund, showing in said report that a single expense fund only was maintained made up of contributions of the members of the three classes then in existence; and that out of said fund all of the expenses of said department were paid; and that the reports of said Board of Control to each biennial session of said defendants, Supreme Lodge Knights of Pythias, thereafter until 1906, each showed the maintenance of a single expense fund so made up and administered.

And that since 1906, said reports have been regularly made, showing at all times the maintenance of a single expense fund, created by contributions from the members of each of the classes, including said fourth class.

That said respective reports of said Board of Control were each and all approved, and the method of administering said expense fund concurred in by said several consecutive biennial sessions.

That theretofore, to-wit: on the 22nd day of January, 1900, the Board of Control of said Endowment Rank, duly enacted and adopted the following regulation touching the funds of said Endowment Rank, to-wit:

## 151

"Resolved, that from and after December 31, 1899, the funds of the Endowment Rank shall be divided into two separate and distinct funds to be known as mortuary and expense funds."

"The Mortuary Fund to consist of all receipts from monthly payments and special assessments (excepting the five cents on each thousand dollars of endowment, levied for expenses, commonly known as monthly dues) as classified in the General Laws, Rules and Regulations of the Rank, less 5 Per Cent thereof; such Mortuary Fund to be used exclusively in the payment of claims accruing under certificates of Membership, whether by death of a member or otherwise."

"The Expense Fund shall consist of 5 per cent. of receipts from monthly payments and special assessments as referred to, and receipts from all other sources; such Expense fund to be used in the payment of all items of expense and in liquidation of all claims against the Rank other than provides for above."

218 Which resolution was printed in the published edition of the constitution governing the Endowment Rank in November, 1900.

That said constitution was promulgated shortly thereafter and became and was distributed among the members of said Rank, and the provisions of said resolution made known to said members.

That thereafter there was adopted at a session of said Supreme Lodge Knights of Pythias held in 1901 a section of the supreme statutes of said order (then section 363) as follows:

"The amounts received under the above table shall be divided into two separate and distinct funds to be known as the mortuary and expense funds, ninety per cent. from the receipt of assessment from the above table shall be known as a mortuary fund, and ten per cent. of the receipts from the assessments under said table shall be paid into and shall be the expense fund."

That at the time said section of the supreme statutes was adopted, there was only one expense fund in existence; which fund was made up, as aforesaid, from contributions of all members of said Endowment Rank.

That at the biennial convention of said Supreme Lodge Knights of Pythias held in New Orleans, Louisiana, in October, 1902, said

## 152

section was by resolution of said convention reaffirmed, but interpreted to mean that ten per cent of said receipts net should be retained as a part of said expense fund, and that an additional five per cent should be deducted from said receipts as a commission for the agent procuring said insurance.

That at said 1906 biennial session there was adopted a section of the supreme statutes known as 393 as follows:

"For the purpose of effecting the orderly conduct of the business of the insurance department of this society, there is hereby created a board of trustees, to be known as the 'board of control,' which board shall have full charge and complete control of the business and affairs of the insurance department, subject at all times and in all things to the direction of, and to account and report to, the Supreme Lodge Knights of Pythias."

Said defendants aver that in devising the plan of distributing the funds of said Insurance Department and in the execution thereof, all as hereinafter set forth, said Board of Control and the officers of said Insurance Department, acting thereunder, have been guided at all times by the distinct purpose of serving the interests of all classes of said Insurance Department, and administering the same with the least practicable cost, and upon a fair distribution of expense.

That the division of said respective funds, the proportionment of the expense of conducting said Insurance Department and the maintenance and distribution of said expense fund, are each and all essentially matters of internal business concern only; and that said defendant The Supreme Lodge Knights of Pythias, through its Insurance Department, has the right to administer said matters according to its own best judgment and discretion; and that none of the Acts complained of in said bill of complaint are proper sub-

## 153

jects of equitable cognizance.

## XVII.

Said defendants further show that as to the several interrogatories, numbered one (1) to twenty-one (21) both inclusive, propounded by said complainants with their said bill of complaint, they have made full and true answer thereto as required and in accordance with the prayer of said bill of complaint.

That as to all of said interrogatories the said defendants, Union B. Hunt and W. O. Powers, have each made answer, (but not under oath), and as to interrogatories one, two, three, four, five, six, seven, eight, nine, ten eleven, eighteen and nineteen, the said defendant, Union B. Hunt, makes answer under oath, which answers to said interrogatories are attached to, and by reference made part of this answer, and marked Exhibit "A."

And these defendants deny all and all manner of unlawful combinations and confederacy wherewith they are by said bill of complaint charged; without this there is any other matter, cause or thing in said complainants' bill of complaint contained material or  
220 necessary for these defendants to make answer to and not herein and hereby well and sufficiently answered, confessed, traversed and avoided or denied is true to the knowledge or belief of these defendants, all of which matters and things these defendants are ready and willing to aver, maintain and prove as this Honorable Court shall direct.

And they humbly pray to be hence dismissed with their reasonable costs and charges in this behalf most wrongfully sustained. (Signed) James P. Goodrich, (Signed) Miller, Shirley, Miller & Thompson, Solicitors for Defendants.

154

## III.

That thereafter, to-wit, on the 22nd day of March, 1911, the complainant filed his general replication to said answer in words and figures following, to-wit:

In the Circuit Court of the United States for the District of Indiana,

FRITZ HEIMSOTH, on Behalf of Himself and All Other Members of the Fourth Class, Endowment Rank of the Supreme Lodge, Knights of Pythias, Complainant,

vs.

THE SUPREME LODGE, KNIGHTS OF PYTHIAS (a Federal Corporation), George M. Hanson, Thomas J. Carling, Henry P. Brown, Charles F. S. Neal, U. S. G. Cherry, Charles S. Davis, William Ladew, George A. Banks, William J. Duval, as Members of the Board of Control of the Insurance Department of the Supreme Lodge, Knights of Pythias; Union B. Hunt, W. O. Powers, George G. McConnell, and Samuel O. Smart, as President, Secretary, Medical Examiner-in-Chief, and Auditor, Respectively, of the Board of Control of the Insurance Department of the Supreme Lodge, Knights of Pythias, Defendants.

### REPLICATION TO ANSWER.

This replicant, Fritz Heimsoth, in behalf of himself and all other members of the Fourth Class Endowment Rank Supreme Lodge Knights of Pythias, saving and reserving to himself all and all manner of advantages of exception which may be had and taken to the manifold errors, uncertainties and insufficiencies of the answer

of the defendants, the Supreme Lodge Knights of Pythias,  
 221 George M. Hanson, Thomas J. Carling, Henry P. Brown,  
 Charles F. S. Neal, Charles S. Davis, William Ladew, George  
 A. Bangs, William J. Duval, as members of the Board of Control of  
 the Insurance Department of the Supreme Lodge Knights of  
 Pythias, Union B. Hunt, W. O. Powers, George B. McConnell, and  
 Samuel O. Smart, as President, Secretary, Medical Examiner-in-  
 Chief, and Auditor, respectively of the Board of Control of the In-  
 surance Department of The Supreme Lodge Knights of Pythias, for  
 replication thereunto sayeth and he doth and will aver, maintain  
 and prove his said bill to be true, certain and sufficient in the law  
 to be answered unto by the said defendants and that the answer of the  
 said defendants is very uncertain, evasive and insufficient in law to  
 be replied unto by this replicant; without that, that any other  
 matter or thing in the said answer contained, material or effectual  
 in the law to be replied unto, confessed or avoided, traversed or  
 denied, is true; all of which matters and things this replicant is ready  
 to aver, maintain and prove as this honorable court shall direct and  
 humbly prays as in and by his said bill he hath already prayed.  
 (Signed) L. A. Stebbins, (Signed) Cassius C. Hadley, Solicitors for  
 Complainant."

## IV.

That thereafter on the 10th day of April, 1911, said cause was duly referred to Edward Daniels, Master in Chancery of said Court, with instructions to report his find-s of fact and to state his conclusions of law thereon to the Court.

## V.

That thereafter, to-wit, on the 15th day of April, 1911, a decree

156

pro confesso was entered in said cause against said defendant U. S. G. Cherry in words and figures following, to-wit

222

11129. Chancery.

"FRITZ HEIMSOOTH

v.

THE SUPREME LODGE, KNIGHTS OF PYTHIAS, et al.

Comes now the complainant by counsel, and upon motion the defendant, Ulysses S. G. Cherry, is three times called and comes not but wholly makes default; whereupon it is shown to the Court by the Marshall's return to the writ of subpoena herein that said defendant was duly served with process more than twenty days before the First Monday in April A. D. 1911 and entered his appearance on the 9th day of February, A. D. 1911, and withdrew his appearance on the 8th day of March, A. D. 1911, and has not pleaded, answered or demurred herein; and on further motion the Court finds on the default aforesaid that the matters and things in the bill alleged are, as to said defendant, Ulysses S. G. Cherry, confessed and true."

## VI.

That thereafter, to-wit, on the 22nd day of May, 1911, leave of Court having heretofore been granted so to do, said defendant except Cherry filed an amendment to their said answer to said bill of complaint in words and figures following, to-wit;

In the Circuit Court of the United States for the District of Indiana.

No. 11129.

**FRITZ HELMSOTH**, on Behalf of Himself and All Other Members of the Fourth Class, Endowment Rank of the Supreme Lodge, Knights of Pythias, Complainant,

vs.

**THE SUPREME LODGE, KNIGHTS OF PYTHIAS** (a Federal Corporation), George M. Hanson, Thomas J. Carling, Henry P. Brown, Charles F. S. Neal, U. S. G. Cherry, Charles S. Davis, William Ladew, George A. Banks, William J. Duval, as Members of the Board of Control of the Insurance Department of the Supreme  
223 Lodge, Knights of Pythias; Union B. Hunt, W. O. Powers, George G. McConnell, and Samuel O. Smart, as President, Secretary, Medical Examiner-in-Chief, and Auditor, Respectively, of the Board of Control of the Insurance Department of the Supreme Lodge, Knights of Pythias, Defendants.

### **AMENDMENT TO DEFENDANTS' ANSWER.**

Come now all the defendants in the above entitled cause, except U. S. G. Cherry, and leave of Court having been first obtained to file certain amendments to the answer of said defendants, except U. S. G. Cherry, in the above entitled cause, the said defendants herewith file the following amendments to said answer.

1.

By inserting at the close of the sixth paragraph or subdivision of said answer on page 4 and immediately following the words "as

158

is more fully hereafter set forth," the following words and figures, to wit:

"And except the averments in said paragraph that Section 16 of Chapter 8 which is set out in said tenth paragraph of complainant's bill of complaint and which is found in pages 95 and 96 of Exhibit "A" attached to and made a part of complainant's bill of complaint was first enacted in 1908 and as to said averments said defendants say, that said part of section 16 of chapter 8 was not in the first legislation of the Supreme Lodge Knights of Pythias which authorized the maintenance of one Expense Fund for the Insurance Department and they aver that by various laws theretofore enacted by said Supreme Lodge Knights of Pythias, and in force for many years prior to 1908, the maintenance of such common Expense Fund



was fully authorized; and the said defendants further aver that said legislation of 1908 was in substance a re-enactment of prior legislation of the Supreme Lodge Knights of Pythias authorizing the maintenance of a common Expense Fund for said Insurance Department."

## 2.

By inserting on page 24 of the defendant's answer in paragraph or subdivision 16 thereof, immediately following the words "and is not in violation of the Fifth nor the Fourteenth Amendment of the Federal Constitution," and immediately preceding the words, "said defendants further aver that said method of maintaining and administering said Expense Fund so complained of is the most practical method," the following words and figures, to wit:

224 Said defendants further aver that continuously since the first day of January, 1907, the day on which said Fifth Class began operation, there have been and still are ample moneys in the joint expense fund of said Insurance Department out of which to pay all of the expenses of said Insurance Department, including the expenses of every kind and character of said Fourth Class and said Fifth Class; and that during all of said time there have been ample funds, resources and assets in the expense fund maintained, as aforesaid, by and for said Insurance Department, to meet all the obligations for the expenses of the Fourth Class and the Fifth Class of said Insurance Department of every kind and character; that under the rates now established for the Fourth and Fifth Classes of said Insurance Department for the insurance of the members of said Fourth

## 159

and Fifth Classes, there will be at all times in the future a joint expense fund of sufficient amount from and out of which all the legitimate expenses of said Fourth Class and said Fifth Class can and will be paid; and that under the rate so maintained and the sums set aside for the maintenance of said expense fund, there will be in the future ample resources, assets and moneys in the joint expense fund to meet every claim whatever kind or character against the Expense Fund of said Insurance Department, including all of the expenses of whatever kind and character of said Fourth Class."

## 3.

To insert in paragraph or subdivision 16 of the said defendants' answer on page 33 thereof, after the words "and to account and report to the Supreme Lodge Knights of Pythias" and before the words "said defendants aver that in devising the plan of distributing the fund of said Insurance Department and in the execution thereof," the following words and figures, to wit:

"That at the biennial convention of said Supreme Lodge Knights of Pythias held in 1908, the said Supreme Lodge adopted section 16 of Chapter 8 mentioned and described in paragraph 10 of complainant's bill of complaint, which reads as follows, to wit:

"Sec. 16. There shall be but one expense fund in the insurance department, and it shall be known as the 'expense fund of the insurance department,' and shall consist of:

"(a) That portion of members' payments and assessments allotted to the expense fund by the Supreme Lodge, or that may be included in any table of rates as an expense loading.

"(b) All membership fees, fees for withdrawal and transfer cards, duplicate certificates, change of beneficiaries and all fees for supplies.

"(c) The increment from the expense fund that may be invested, and all increment from interest earnings on the investment of the mortuary fund in excess of earnings of  $3\frac{1}{2}$  per centum per annum, on such funds as may be invested.

"(d) All sums which are not specifically declared mortuary funds, which provides, "There shall be but one expense fund."

225 Said defendants further aver that under the terms and conditions prescribed by the said Supreme Lodge for the transfer of members from the Fourth to the Fifth Class of said Insurance department, and by virtue of the legislation of said Supreme Lodge in respect thereto the members so transferring re-

## 160

linquished all right to any claim upon the Mortuary Fund of said Fourth Class, but retained their interest in the common expense fund of said Insurance Department; and that said terms and conditions were fully set out in the legislation of said Supreme Lodge Knights of Pythias, which created the Fifth Class of said Insurance Department, and provided for the transfer of members from the Fourth to the Fifth Class of the said Insurance Department; that full publicity was given to the legislation of said Supreme Lodge in the regular publications of said Supreme Lodge, which were mailed to each member of the Insurance Department, including this complainant and all other members of the Fourth Class, and that a report was contained in said magazine and publication of the proceedings of said Supreme Lodge in reference to the creation of a Fifth Class and the terms and conditions upon which transfer could be had by members of the Fourth Class to the Fifth Class, all as hereinabove set out and averred; that the said Fifth Class was created and established by legislation adopted by said Supreme Lodge in 1906, and that thereafter, beginning on the first day of January, 1907, the said Supreme Lodge and the Board of Control thereof commenced to receive transfers from the Fourth Class to the Fifth Class of said Insurance Department; that thereafter, in 1908, the biennial convention of said Supreme Lodge Knights of Pythias was held, and that neither complainant nor any member of the said Fourth Class protested to said Biennial convention of 1908, or to the said Supreme Lodge, or to said Board of Control, with reference to the creation of said Fifth Class, or the use of said common Expense Fund for said Insurance Department at any time prior to the first day of January, 1911, but that this complainant and all other members of the Fourth Class, who had not transferred to the Fifth Class, permitted fifty-five thousand members of the Fourth Class to trans-

fer to the Fifth Class upon the terms and conditions adopted by said Supreme Lodge, and hereinabove set forth, and that complainant and said members of the Fourth Class, who have not transferred to the Fifth Class, by their said inaction, acquiescence and failure to protest, allowed said fifty-five thousand members to transfer from the said Fourth Class to the Fifth Class, and thereby to relinquish all claim which said fifty-five thousand members had upon the Mortuary Fund of said Fourth Class; that said fifty-five thousand members so transferring, as aforesaid, relied upon the legislation of said Supreme Lodge with reference to the creation and maintenance of a common Expense Fund, and upon the inaction and acquiescence of said Fourth Class members, who had not transferred, in such legislation; that this complainant and the other members of the Fourth Class, who did not transfer, permitted the Board of Control and the said Supreme Lodge to pay large sums of money, to wit, more than a half million dollars out of said common Expense fund for the benefit of all the Classes of said Insurance Department, without protest; that during all of said time the said members of the said Fourth Class, who did not transfer to the Fifth Class, have each and all of them received substantial benefit, as members of said

## 161

226 Insurance Department, in the form of life insurance, the sums being of a large pecuniary value, greatly in excess of the sums contributed by them, as aforesaid; that it would, therefore, be inequitable to permit them to disavow and repudiate the action of said defendant, and its Insurance Department, in which they have actually participated, and through which they have received large benefits, as aforesaid; that by reason of the facts, the said members of the Fourth Class, who have not transferred to the Fifth Class including this complainant, are estopped to deny the right of the said defendant Supreme Lodge, its Insurance Department and its Board of Control, to administer jointly the Expense Fund for the benefit of both the Fourth and Fifth Classes of said Insurance Department." (Signed) James P. Goodrich (Signed) Miller, Shirley, Miller and Thompson, Solicitors for defendants.

## VII.

That thereafter, to wit, on the 18th day of December, 1911, leave of Court having theretofore been granted so to do, complainant filed a supplemental bill of complaint in said cause in words and figures as follows, to wit:

"In the Circuit Court of the United States for the District of Indiana.

No. 11129.

**FRITZ HEIMSOOTH**, on Behalf of Himself and All Other Members of the Fourth Class, Endowment Rank of the Supreme Lodge, Knights of Pythias, Complainant,

vs.

**THE SUPREME LODGE, KNIGHTS OF PYTHIAS** (a Federal Corporation), George M. Hanson, Thomas J. Carling, Henry P. Brown, Charles F. S. Neal, U. S. G. Cherry, Charles S. Davis, William Ladew, George A. Bangs, William J. Duval, as Members of the Board of Control of the Insurance Department of the Supreme Lodge, Knights of Pythias; Union B. Hunt, W. O. Powers, George G. McConnell, and Samuel O. Smart, as President, Secretary, Medical Examiner-in-Chief, and Auditor, Respectively, of the Board of Control of the Insurance Department of the Supreme Lodge, Knights of Pythias, Defendants.

227

### SUPPLEMENTAL BILL.

To the Honorable Judges of the Circuit Court of the United States for the District of Indiana:

Your orator, Fritz Heimsoth, did on or about the 27th day of January, 1911, exhibit his original bill of complaint to this honorable court, not only on his own behalf but also on behalf of all other members of the Fourth Class, Endowment Rank of the Supreme Lodge Knights of Pythias, against the said defendants above named, who are hereby made defendants to this his supplemental bill, praying that an accounting be had of the money and property of the Fourth Class that has been used for the benefit of the Fifth Class, and especially that an accounting be had between said

163

classes as to the ownership of the expense fund of the defendant, The Supreme Lodge Knights of Pythias.

Your orator further complaining says that issues were duly made up on said bill of complaint, and the cause was heretofore duly referred to the standing master in chancery of this court to take testimony and report his conclusions of law and fact thereon; that during the taking of said testimony it has been disclosed, and the fact is, that since the filing of this bill there has been transferred by the said Board of Control from the expense fund, as such expense fund was maintained prior to the filing of the original bill herein, as in said original bill more fully set forth, to the mortuary fund of the Fifth Class about One Hundred and Twenty Thou-

said (\$120,000.00) Dollars, and to the mortuary fund of the Fourth Class about Seventeen Thousand (\$17,000.00) Dollars, and your orator avers that said Board of Control is threatening to make further transfers of said expense fund to the said mortuary funds upon a basis of division between said two classes substantially similar to that indicated by the transfers already made. Your orator avers that said apportionment of said sums transferred from said expense fund to said mortuary funds is purely arbitrary; that it is grossly unjust to said Fourth Class; that it is contrary to law; that it does not correspond to the respective equitable interests of the said classes in the said expense fund but on the contrary that the said Fourth Class is equitably the owner of the entire expense fund now on hand and in the possession of the said Board of Control.

Wherefore your orator prays that the said transfer to the mortuary fund of the Fourth Class already made be confirmed and approved but that said transfer of said One Hundred and Twenty Thousand (\$120,000.00) Dollars to the mortuary fund of said

164

Fifth Class be declared to be illegal and void and be set aside and annulled and the said One Hundred and Twenty Thousand (\$120,000.00) Dollars be decreed to be the property of the said Fourth Class, and that the said Board of Control and other defendants to this supplementary bill be enjoined from making any further transfers from the said expense fund to the mortuary fund of the Fifth Class until the respective interests of the said Classes in said expense fund be finally determined by this court, and upon final hearing the said Board of Control and other defendants hereto be enjoined from making any other transfers whatever from the said expense fund to the said mortuary fund of the Fifth Class, and that said entire expense fund, or so much thereof as the evidence may disclose to be the property of the Fourth Class may be adjudged to be the property of the Fourth Class, and that your orator have such other and further relief in the premises as may be agreeable to equity and good conscience. (Signed) Fritz Heimsoth, Complainant. (Signed) Lewis A. Stebbins, Solicitor for Complainant. (Signed) Cassius C. Hadley, of Counsel."

### VIII.

That thereafter, to-wit, on the 21st day of December, 1911, said defendants except said Cherry filed their answer to said supplemental bill of complaint in words and figures following, to-wit:

229 In the Circuit Court of the United States for the District of Indiana.

No. 11129. In Equity.

FRITZ HEIMSOTH, on Behalf of Himself and All Other Members of the Fourth Class, Endowment Rank of the Supreme Lodge, Knights of Pythias, Complainant,

vs.

THE SUPREME LODGE KNIGHTS OF PYTHIAS (a Federal Corporation), George M. Hanson, Thomas J. Carling, Henry P. Brown, Charles F. S. Neal, U. S. G. Cherry, Charles S. Davis, William Ladew, George A. Bangs, William J. Duval, as Members of the Board of Control of the Insurance Department of the Supreme Lodge, Knights of Pythias; Union B. Hunt, W. O. Powers, George G. McConnell, and Samuel O. Smart, as President, Secretary, Medical Examiner-in-Chief, and Auditor, Respectively, of the Board of Control of the Insurance Department of the Supreme Lodge Knights of Pythias, Defendants.

**ANSWER OF ALL THE DEFENDANTS EXCEPT U. S. G. CHERRY TO THE SUPPLEMENTAL BILL OF COMPLAINT OF FRITZ HEIMSOTH ON BEHALF OF HIMSELF AND OTHERS.**

These defendants, The Supreme Lodge Knights of Pythias, (a Federal corporation), George M. Hanson, as Supreme Chancellor of the Supreme Lodge Knights of Pythias and ex officio members of The Board of Control of the Insurance Department of said The Supreme Lodge Knights of Pythias, Thomas J. Carling as Supreme Vice-Chancellor of The Supreme Lodge Knights of Pythias and ex officio member of the Board of Control, Henry P. Brown as Junior Past Supreme Chancellor of The Supreme Lodge Knights of Pythias and ex officio member of the Board of Control, Charles F.

166

S. Neal, Charles S. Davis, William Ladew, George A. Bangs, William J. Duval as members of the Board of Control of the Insurance Department of the Supreme Lodge Knights of Pythias, Union B. Hunt, W. O. Power, George G. McConnell, and Samuel O. Smart, as President and General Counsel, Secretary, Medical Examiner-in-Chief, and Auditor, respectively, of the Board of Control of the Insurance Department of The Supreme Lodge Knights of Pythias now and at all times hereafter saving to themselves all and all manner of benefit of exception or otherwise that can or may be had or taken to the many errors, uncertainties and imperfections in the said supplemental bill of complaint, contained, for answer thereto or to so much thereof as these

defendants are advised it is material or necessary for them to make answer to, answering say.

These defendants admit that the Board of Control of the Insurance Department of said defendant, Supreme Lodge Knights of Pythias, has, during the year 1911, transferred or caused to be transferred from the expense fund of said Insurance Department to the Mortuary Fund of the Fifth Class more than One Hundred Twenty Thousand Dollars (\$120,000), to-wit: the sum of One Hundred Forty-one Thousand Four Hundred Six Dollars (\$141,406); but these defendants deny that the Board of Control of said Insurance Department has transferred from the expense fund of the Insurance Department to the Mortuary Fund of the Fourth Class only Seventeen Thousand Dollars (\$17,000); but on the contrary aver that said Board of Control has, during the year 1911, transferred from said expense fund to the Mortuary Fund of the Fourth Class the sum of Thirty-five Thousand Three Hundred Fifty-one Dollars and Forty-nine Cents (\$35,351.49); and these defendants deny that the basis of division between the Fourth

167

Class and the Fifth Class of said Insurance Department as to moneys transferred from the joint or general expense fund of said Insurance Department is arbitrary or unjust to Fourth Class members, but aver that the amount transferred from said expense fund of the Insurance Department to the Mortuary Funds of the Fourth and Fifth Classes of said Department respectively, was distributed upon the basis of the contributions of the Fourth and Fifth Class members respectively to the Expense Fund of said Insurance Department during the year 1910, and that said basis of distribution was and is a fair, just and equitable one to members of the Fourth Class.

These defendants admit that the Board of Control of said Insurance Department intends to transfer an additional sum from the Expense Fund of said Department to the Mortuary Funds of the Fourth and Fifth Classes respectively, which said transfer will be as of December 20th, 1911, and that there will be transferred as of said date approximately Five Thousand Dollars (\$5,000.00) to the Mortuary Fund of the Fourth Class, and approximately Eighteen Thousand Dollars (\$18,000.00) to the Mortuary Fund of the Fifth Class; that it is impossible at this time to state definitely the exact amount of such transfer to each of said classes respectively; the defendants deny that there will be any additional transfers made by said Board of Control from the Expense Fund to the Mortuary Funds of either the Fourth or Fifth Classes during the year 1912.

These defendants further deny that the apportionment of said sums transferred from said Expense Fund to said Mortuary Funds is purely arbitrary; that it is grossly unjust to said Fourth Class; that it is contrary to law or that it does not correspond to the respective equitable interests of the said classes in the said Expense



168

fund, and further deny that the Fourth Class is equitably the owner of the entire Expense fund now on hand and in the possession of the said Board of Control.

And said defendants deny all and all manner of unlawful acts whatsoever whereof it is in any wise by said supplemental bill of complaint charged, all of which matters and things these defendants are ready and willing to prove, as this Honorable Court shall direct, and pray to be henceforth dismissed with their reasonable costs and charges in this behalf most wrongfully sustained. (Signed) James P. Goodrich, (Signed) Miller, Shirely, Miller & Thompson, Solicitors for Defendant.

232

IX.

That thereafter, on the 12th day of January, 1912, said defendants, except said Cherry, leave of Court having theretofore been granted, so to do, filed an amendment to their answer in words and figures following, to-wit:

169

"In the Circuit Court of the United States for the District of Indiana.

Fritz Heimsöth, on Behalf of Himself and All Other Members of the Fourth Class, Endowment Rank of the Supreme Lodge, Knights of Pythias, Complainant,

vs.

THE SUPREME LODGE, KNIGHTS OF PYTHIAS (a Federal Corporation), George M. Hanson, Thomas J. Carling, Henry P. Brown, Charles F. S. Neal, U. S. G. Cherry, Charles S. Davis, William Ladew, George A. Bangs, William J. Duval, as Members of the Board of Control of the Insurance Department of the Supreme Lodge, Knights of Pythias; Union B. Hunt, W. O. Powers, George G. McConnell and Samuel O. Smart, as President, Secretary, Medical Examiner-in-Chief, and Auditor, Respectively, of the Board of Control of the Insurance Department of the Supreme Lodge, Knights of Pythias, Defendants.

### AMENDMENT TO ANSWER.

The defendants in the above entitled cause, other than U. S. G. Cherry, file the following amendment to their answer to the bill of complaint in the above entitled cause; said amendment to be inserted on page 23, in line 12, following the words "established from time to time."

That from the organization of the Endowment Rank in 1880, down to the year ending March 31, 1886, a single expense fund was kept out of which was paid all the expenses of the First, Second, and Third Classes of said Rank, down to the time when the Fourth Class

## 170

was organized in the year 1884, and from and after the organization of said Fourth Class in the year 1884 the expenses of the First, Second, Third and Fourth Classes were paid out of said expense fund, down to March 31, 1886; that at the end of the fiscal years 1885 and 1886 there was taken from the Fourth Class fund what was estimated to be their pro rata part of the expense of administration of the Endowment Rank, which amount was paid into the common expense fund of the Endowment Rank; that by the year 1887 the First, Second and Third Classes had practically disappeared and but few members were left therein; that from the year 1887, down to and including the year 1894, there was a common expense fund kept for the First, Second and Third Classes, and a separate expense fund for the Fourth Class, and the two divisions were so separated until the year 1894; that from the fiscal year ending March 31, 1894, a single fund was maintained known as the "Endowment Fund" of the Endowment Rank, into which was transferred all of the funds on hand belonging to the First, Second, Third and Fourth Classes, and into which all of the receipts of the Endowment Rank were paid, and out of which all of the expenses and death losses were paid, down to and including the fiscal year ending December 31, 1906.

The defendants further amend said answer by striking out the averment commencing on page 23, line 12, with the words "and that at no time" and ending at line 5 on page 24, with the words "Fully authorized said proceedings," and by inserting in lieu thereof the following statement:

"And that at no time since 1894 has there been any separate expense fund maintained or in existence for any class of said Insurance Department, but that since said date all expenses of said Insurance Department have been paid with the full knowledge, acquiescence and consent of all members thereof from a common fund

## 171

known as the "Endowment Fund," to which all members have contributed; that subsequent to January 1, 1907, all expenses of said Insurance Department have been paid out of the common expense fund of said Insurance Department." (Signed) James P. Goodrich, (Signed) Miller, Shirley, Miller & Thompson, Attys. for said Dfts."

## X.

That thereafter, on the 17th day of January, 1912, said defendants except said Cherry, leave of Court having been obtained so to do, filed an amendment to their answer and a supplemental answer in words and figures following, to-wit:

"In the Circuit Court of the United States for the District of Indiana

No. 11129.

FRITZ HEIMSOTH, on Behalf of Himself and All Other Members of the Fourth Class, Endowment Rank of the Supreme Lodge, Knights of Pythias, Complainant,

vs.

THE SUPREME LODGE, KNIGHTS OF PYTHIAS (a Federal Corporation), George H. Hanson, Thomas J. Carling, Henry P. Brown, Charles F. S. Neal, U. S. G. Cherry, Charles S. Davis, William Lader, George A. Bangs, William J. Duval, as Members of the Board of Control of the Insurance Department of the Supreme Lodge, Knights of Pythias; Union B. Hunt, W. O. Powers, George G. McConnell and Samuel O. Smart, as President, Secretary, Medical Examiner-in-Chief, and Auditor, Respectively, of the Board of Control of the Insurance Department of the Supreme Lodge, Knights of Pythias, Defendants.

172

### AMENDMENT OF DEFENDANTS' ANSWER AND SUPPLEMENTAL ANSWER.

Come now all the defendants in the above entitled cause, except U. S. G. Cherry, and leave of court having been first obtained to file a certain amendment to the answer of said defendants, and supplemental answer, in the above entitled cause, the said defendants herewith file the following amendment to said answer and supplemental answer:

235 By inserting in Paragraph Sixteen of defendants' answer on page 35 thereof, after the words, "and upon a fair distribution of expense," and before the words, "That the division of said respective funds," etc., the following words and figures, to-wit:

"That of those persons who were at the date of the filing of complainants' bill herein members of the Fourth Class of said Insurance Department and who still remain members of said Fourth Class, all but three hundred (300) have expressly accepted in writing and approved said legislation of said Supreme Lodge Knights of Pythias of 1906, 1908 and 1910, by applying for and accepting said certificates of membership in said Fourth Class, which have been received, accepted and retained by said members, in each and all of which said certificates it is expressly recited that said certificates are subject to all the laws governing said insurance Department, enacted by the Supreme Lodge prior to the issuance of said certificate, and all laws thereafter to be enacted or adopted, and that each of said members of said Fourth Class has since the issuance and receipt of said new certificates paid to said Insurance Department all dues and assessments that have become due under and by virtue of said certificates, and have enjoyed since the issuance of said respective

## 173

certificates, and now enjoy the full benefit of the protection afforded thereby.

That by reason of said facts said members of the Fourth Class are estopped to question the validity of the legislation adopted by the Supreme Lodge in the years 1906, 1908, and 1910, with respect to said Insurance Department, and are estopped to question the manner in and by which the expense fund of said Insurance Department has been maintained and administered." James P. Goodrich, Miller, Shirley, Miller & Thompson, Solicitors for said defendants.

236

X-1/2

That after said order of reference was entered and during the hearing of said cause before the Master, one W. R. Petree, by agreement of the parties, intervened in said cause and adopted as his own the averments of the original and supplemental bills of complaint, the intervening petition of said Petree being in words and figures following, to-wit:

"In the Circuit Court of the United States for District of Indiana.

No. 11129.

Fritz Heimsoth

vs.

THE SUPREME LODGE, KNIGHTS OF PYTHIAS, et al.

**INTERVENING PETITION OF W. R. PETREE.**

W. R. Petree, of Belgreen, in the State of Alabama, and a citizen

174

of the State of Alabama, by leave of court first duly obtained, brings this his intervening petition on behalf of himself and all other members of the Fourth Class of the Endowment Rank or the Supreme Lodge Knights of Pythias who are not already parties to this case against the Supreme Lodge Knights of Pythias, a corporation with its chief office and place of business in the City of Indianapolis and State of Indiana, being a citizen of the District of Columbia, and all other persons who are named as defendants in the original bill filed herein by Fritz Heimsoth, and for cause of complaint against the said defendants your intervening petitioner complains and says.

1. That he is a resident of Belgreen, in the State of Alabama, and is a citizen of the State of Alabama.

2. That he adopts as his own the same as though they were here again repeated each and every, all and singular, the allegations in the original bill filed herein by Fritz Heimsoth, which are contained

in paragraphs 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21 and 22 of said bill; also all of the supplemental bill as filed herein by leave of court.

237 3. That on or about the — day of —, 18—, said Supreme Lodge Knights of Pythias, pursuant to the provisions of its charter, made, executed, and delivered to your petitioner a certain certificate in writing of membership in the Fourth Class of the said Endowment Rank; that said certificate was numbered eleven thousand three hundred and ten (11,310) and was for the sum of Three Thousand (\$3,000.00) Dollars and was in all other essential respects substantially the same in form and substance as the certificate issued to Fritz Heimsoth, as set forth and attached to the original bill

## 175

herein; that since the execution and delivery of said certificate your petitioner has paid to the Supreme Lodge Knights of Pythias and the Endowment Rank thereof all assessments as required and has fully complied with all the laws governing said rank in force at the time of the issuance of said certificate or thereafter enacted, and is now in good standing under said laws.

Wherefore your petitioner adopts the same as though it was here again repeated in full paragraph 2 of the prayer of the original bill filed herein by Fritz Heimsoth as your petitioner's prayer in this intervening petition, and also adopts the prayer of the supplemental bill as filed herein by Fritz Heimsoth as part of your petitioner's prayer in his intervening petition; your petitioner also prays for such other and further relief in the premises as may be agreeable to equity and good conscience. (Signed) William R. Petree. (Signed) L. A. Stebbins, Solicitor for Complainant. (Signed) C. C. Hadley, Of Counsel.

And thereupon all the parties to said cause except Ulysses S. G. Cherry signed and entered into the following stipulation therein, to-wit:

238 In the District Court of the United States for the District of  
Indiana.

No. 11129. In Equity.

FRITZ HEIMSOOTH

v.

THE SUPREME LODGE, KNIGHTS OF PYTHIAS, et al.

### STIPULATION.

It is stipulated and agreed by all the parties in said cause, except the defendant, U. S. G. Cherry, that the replication heretofore filed to the answer in this case shall be taken and considered as a replication to all amendments to said answer, and the answer to the supplemental bill of complaint heretofore filed in said cause.

It is also stipulated by said parties that William R. Petree, intervening petitioner herein, is a member in good standing of the Fourth Class of the Insurance Department of the Supreme Lodge Knights of Pythias; that he was admitted to membership in said Fourth Class August 14, 1885, at the then age of forty-four years, at which time there was issued and delivered to him a certificate of membership, No. 10,310 providing indemnity in case of death to the beneficiary therein named in the sum of Three Thousand Dollars, upon the conditions stated in said benefit certificate.

That said Petree has contributed and paid to the Endowment Rank and Insurance Department of the Supreme Lodge Knights of Pythias in all as such member of said Fourth Class the several sums upon the respective dates following, to-wit:

177

1885.	5 Mo., at	.....	\$3.90	\$19.50
1886.	12 " "	.....	3.90	46.80
1887.	12 " "	.....	3.90	46.80
1888.	12 " "	.....	3.90	46.80
1889.	12 " "	.....	3.90	46.80
1890.	12 " "	.....	3.90	46.80
1891.	12 " "	.....	3.90	46.80
1892. 1 sp.	13 Mo., "	.....	3.90	50.70
1893.	12 Mo., "	.....	3.90	46.80
1894.	2 " "	.....	3.90	7.80

239

1894.	10 Mo., at	.....	4.05	40.50
1895.	12 " "	.....	4.05	46.80
1896.	12 " "	.....	4.05	46.80
1897.	12 " "	.....	4.05	46.80
1898.	12 " "	.....	4.05	46.80
1899.	12 " "	.....	4.05	46.80
1900.	12 " "	.....	4.05	46.80
1901. 1 Sp.	9 " "	.....	4.05	36.45)
1901.	4 " "	.....	6.30	25.20)
1902.	12 " "	.....	6.30	75.60
1903.	12 " "	.....	6.30	75.60
1904.	12 " "	.....	6.30	75.60
1905.	12 " "	.....	6.30	75.60
1906.	12 " "	.....	6.30	75.60
1907.	12 " "	.....	6.30	75.60
1908.	12 " "	.....	6.30	75.60
1909. 2 sp.	14 " "	.....	6.30	88.20
1910. 3 sp.	15 " "	.....	6.30	94.50
Age 69, 1911	12 Mo., "	.....	25.95	311.40

Total ..... \$1,822.65

That said sums include all items paid by said Petree both for mortuary and expense purposes, except such sums as he may have paid to the Secretary of the Section to which he belonged; that the actual mortuary cost of said insurance (not including any sum for necessary reserve) calculated upon a 3% interest earning assumption for said Petree from August 14, 1885, to December 31, 1910 was \$1,961.40 or \$450.15 more than the total contributions for both mortuary and expense purposes received by the defendant Supreme Lodge from said Petree during said time.

It is further stipulated that said Petree be permitted to file his intervening petition herein, and that the answers filed to the original and supplemental bills and amendments to said answers, and the replication thereto shall be taken and considered as answers to the said intervening petition and replications thereto respectively.

And it is further stipulated that there shall be no vacation of the reference to the Master heretofore made but his findings and recommendations shall be taken and considered as though said intervening petition had been filed prior to such reference; Provided, however, that either party may introduce any additional evidence that may be applicable to the issues raised by said intervening petition and not covered by evidence already introduced; and  
240 that said defendants shall have the right to plead by way of amendment to the answers heretofore filed such matters and facts as may be necessary to make such answers applicable to said intervening petition and fully cover the allegations thereof.

It is further stipulated that the intervening petitioner will within — days from this date produce to be introduced as evidence in said cause his benefit certificate above described. (Signed) L. A. Stebbins, (Signed) C. C. Hadley, Solicitors for Complainant. (Signed) James P. Goodrich, (Signed) Miller, Shirley, Miller & Thompson, Solicitors for Defendants.

That thereafter said Master in Chancery, pursuant to said order of reference, took the evidence in support of the issues joined in said cause, including the use and disposition by said defendant, The Supreme Lodge Knights of Pythias, and the officers of its said Insurance Department, of the same expense fund of \$394,082.25 and all additions and accretions thereto, and, after hearing the argument of counsel, duly filed his report containing his findings of fact and stating his conclusions of law on the 18th day of February 1913, which report of said Master in Chancery (omitting the evidence taken in said cause) was in words and figures following, to-wit:



180

In the District Court of the United States for the District of Indiana.

In Chancery. No. 11129.

FRITZ HEIMSOOTH, Complainant,

v.

SUPREME LODGE, KNIGHTS OF PYTHIAS, et al., Defendants.

### MASTER'S REPORT.

241 I hereby certify that the foregoing, (comprising pages 1 to 192A, inclusive) is Volume 1 of the Bill of Exceptions, composed of Three volumes, each so respectively numbered, in the case of George O. Meyer, Plaintiff, against The Supreme Lodge Knights of Pythias.

In witness whereof I have hereunto set my hand this 8th day of March, 1922. L. L. Turpin, Reporter.

I hereby certify that the foregoing is Volume 1 of the Bill of Exceptions allowed, settled and filed in the above entitled cause this day.

Dated this 8th day of March, 1922. John C. Miller, Clerk District Court. Seal of the Otoe County District Court, State of Nebraska.

I hereby certify that the foregoing is Volume 1 of the Bill of Exceptions allowed and settled this day in the above entitled cause.

Dated this 8th day of March, 1922. James T. Begley, Judge Second Judicial District of Nebraska.

[Endorsed:] 22706. Meyer v. Supreme Lodge Knights of Pythias. Bill of Exception, Vol. 1. Supreme Court of Nebraska. Filed Mar. 30, 1922. H. C. Lindsay, Clerk.

242 In the District Court of Otoe County, Second Judicial District of Nebraska.

GEORGE O. MEYER, Plaintiff,

vs.

THE SUPREME LODGE, KNIGHTS OF PYTHIAS, Defendant.

### DEFENDANT'S BILL OF EXCEPTIONS.

Composed of Volumes 1 & 2 & 3.

Volume 2.

Appearances: For Plaintiff, Mr. D. W. Livingston and Mr. Paul Jessen; for Defendant, Mr. W. J. Connell and Mr. Sol. H. Esarey.

District Court, Otoe County, Neb., Filed Mar 8, 1922. John C. Miller, Clerk. No. 9139.

243 I hereby certify that the following (comprising pages 192-B to 403, inclusive) is Volume 2 of the Bill of Exceptions, composed of three Volumes, each so respectively numbered, in the case of George O. Meyer, Plaintiff, against the Supreme Lodge, Knights of Pythias, Defendant. Tried in the District Court of Otoe County, Nebraska, at the regular September Term, 1921, thereof.

In witness whereof I have hereunto set my hand this 8th day of March, 1922. L. L. Turpin, Reporter.

I hereby certify that the following is Volume 2 of the Bill of Exceptions, allowed, settled and filed in the above entitled cause this day.

Dated 8th day of March, 1922. John C. Miller, Clerk of District Court. [Seal of the District Court of Otoe County, State of Nebraska.]

I hereby certify that the following is Volume 2 of the Bill of Exceptions allowed and settled this day in the above entitled cause.

Dated this 8th day of March, 1922. James T. Begley, Judge District Court.

244 To the Honorable Albert B. Anderson, Judge of said District Court:

The Undersigned Master in Chancery, to whom said suit was referred with direction to take the testimony and report the same together with his findings of fact and conclusions of law thereon, respectfully reports as follows:

At the times and places designated in notes to the respective parties for the taking of testimony he was present and was attended by the respective solicitors of the complainant and the defendants; that witnesses were produced before said Master by both the complainant and defendants, and gave their testimony; that the testimony of the witnesses so produced was taken down in shorthand by Mr. Rowland Evans, the official stenographer of said Court, and the same was by said stenographer written out in longhand and is contained in one volume of evidence, which is identified by the signature of said Master in Chancery, and is returned herewith together with all the Exhibits referred to by said witnesses, including cer-

tain detached exhibits which it was stipulated by the parties should not be copied at length in the record but should be returned by the Master with his report into Court, and that said Exhibits and each of them should have the same force and effect as evidence as though they had been copied at length into the record.

Upon the pleadings and testimony the said Master makes and states the following:

*Findings of Fact.*

That the complainant was at the time his bill of complaint was filed, and is now a citizen and resident of the State of Illinois; the citizenship of the defendants other than Supreme Lodge Knights of Pythias is as averred in the Bill of Complaint, that the defendant Supreme Lodge Knights of Pythias, is a corporation existing under the laws of the United States in the manner following, 245 that is to say; on or about the fifth day of August, 1870, a corporation having the name of the Supreme Lodge Knights of Pythias was organized conformably with the provisions of the general incorporation laws of the District of Columbia and in 1875 and 1882, the charter of said Corporation was amended and by said 1882 Amendment it was among other things provided as follows: That the said Supreme Lodge shall have power to establish the Uniform Rank and the Endowment Rank upon such terms and conditions, and governed by such rules and regulations as to the said Supreme Lodge may seem proper, which was originally organized under The Act of Congress, pursuant to which such incor-

## 182

poration was made, was approved May 5, 1870, authorizing the incorporation in the District of Columbia of benevolent, educational and other corporations, and was entitled; "An act to provide for the creation of corporations in the District of Columbia by general law;" that the charter of said original corporation expired in 1890 by limitation, but that said original corporation continued to do business as a de facto corporation until June 29th, 1894, when the defendant Supreme Lodge, Knights of Pythias was incorporated under an Act of Congress approved June 29th, 1894, entitled, "An Act to incorporate the Supreme Lodge Knights of Pythias" as the successor of said original corporation, and took over by succession as in said Act provided all the property and the administration of all the affairs of said original corporation by and with the acquiescence and consent of all its members, and has ever since continued to act as the successor of said original corporation with the full knowledge, acquiescence and consent of said entire membership including complainant and the intervening petitioner herein.

## II.

That among the provisions of the Act of Congress of June 29th, 1894, by which said defendant was incorporated were the 246 following designated as sections 2 to 6, both inclusive, to-wit:

"Sec. 2. That the said corporation shall have the power to take and hold real and personal estate, (not exceeding in value one hundred thousand dollars) which shall not be divided among the members of the corporation, but shall descend to their successors for the

promotion of the fraternal and benevolent purposes of said corporation.

183

Sec. 3. That all claims, accounts, debts, things in action or other matters of business of whatever nature now existing for or against the present Supreme Lodge Knights of Pythias, mentioned in section 1 of this Act, shall survive and succeed to and against the body corporate and politic hereby created; provided, that nothing contained herein shall be construed to extend the operation of any law which provides for the extinguishing of claims or contracts by limitations of time.

Sec. 4. That said corporation shall have a constitution and shall have power to amend the same at pleasure; provided, that such constitution or amendments thereof do not conflict with the laws of the United States or of any state.

Sec. 5. That said corporation shall not engage in any business for gain; the purposes of said corporation being fraternal and benevolent.

Sec. 6. That Congress may at any time amend, alter or repeal this act."

That Section 2 above set out was amended by an Act of Congress approved February 26th, 1907, by striking out the words: "not exceeding in value one hundred thousand dollars."

That said Act of June 29th, 1894, was amended by Act of Congress approved June 7th, 1900, by adding thereto the following words: "Said Corporation may provide for the meetings of its legislative or governing body wherever such association shall have subordinate bodies, and all business transacted at such meetings shall be valid in all respects as if such meetings were held within said District; and all business heretofore transacted at any meetings held outside of the District of Columbia shall be valid in all respects to the same extent as if such meetings had been held within said District."

184

## III.

That said original corporation was during its entire existence and said defendant is and has been since its incorporation a fraternal beneficiary society; that neither the defendant nor its said  
247 predecessor was organized or was ever conducted for profit; that each of said corporations during the entire period of their existence respectively possessed a lodge system and a ritualistic form of work and had a representative form of government, the members of said two corporate bodies were designated as brothers or Knights and the affairs of said two corporations were conducted at stated meetings of the members designated as Supreme Lodge, Grand Lodges, Subordinate Lodges and Sections of Endowment Rank; that said predecessor of said defendant established in the year 1877, a system of insurance for the protection of its members

and their beneficiaries who desired to take advantage of the protection so provided, which was known as the "Endowment Rank" and which was conducted as such Endowment Rank by said original corporation and said defendant successively until 1906, when it became known as and has since continued to be operated under the name of "Insurance Department of the Supreme Lodge Knights of Pythias."

That the benefits of said system of insurance so established and conducted by said respective corporations successively have always been and are now confined to members of the order; that membership in said Endowment Rank (now Insurance Department) is and always has been restricted to members of said Order who had attained the rank of Knight and were in good standing in a subordinate

185

lodge, but that no member of said order was compelled to join said Endowment Rank (now Insurance Department); that the sole purpose of establishing and maintaining said Endowment Rank (now Insurance Department) was to provide indemnity for the beneficiaries of its deceased members; that neither of said corporations has ever at any time had any capital stock.

That by Article XIII of the Constitution of the Supreme Lodge Knights of Pythias it was provided that:

"The Insurance Department known as the Endowment Rank, established for the purpose of providing indemnity for the  
248 beneficiaries of deceased members of the Order, is a fraternal beneficiary society, and shall be governed by such laws as the Supreme Lodge may enact or authorize; provided, that the attainment of membership in such Insurance Department shall be restricted to members of the Order who have attained the rank of Knight and are in good standing in a Subordinate Lodge, but shall not be compulsory upon any member of the Order."

That by the provisions of Section 1, of Chapter 2, of the Code of the Supreme Lodge Knights of Pythias, adopted in 1906 and duly promulgated, the following was made a law of the Order, namely:

"For the purpose of effecting the orderly conduct of the business of the Insurance Department of this Society there is hereby created a Board of Trustees to be known as the Board of Control, which Board shall have full charge and complete control of the business and affairs of the Insurance Department, subject at all times, and in all things, to the direction of and to account and report to the Supreme Lodge Knights of Pythias."

186

That the jurisdiction of said respective corporations has always been during their respective lives co-extensive with the territorial limits of the United States; that the Supreme Lodge, which has always been the supreme Governing body of said respective corpora-

tions in succession, has established throughout the United States Grand Lodges in the several states and territories, which are and always have been organized and maintained under the authority of said Supreme Lodge; that said several Grand Lodges have organized subordinate lodges, which are responsible to said Grand Lodges, and in like manner Sections of the Endowment Rank.

## V.

That under said Lodge system there was established in the State of Illinois, prior to 1880, a Grand Lodge, and under the jurisdiction of said Grand Lodge certain subordinate lodges; that the complainant is and has been since prior to the date of his certificate, here-  
 249 inafter mentioned, a member in good standing of the Order of Knights of Pythias in a subordinate lodge of said Order in said State of Illinois; that under said Lodge system there was established in the State of Alabama, prior to 1897, a Grand Lodge and under the jurisdiction of said Grand Lodge certain subordinate lodges; that the intervening petitioner herein, W. R. Petree, was and has been ever since prior to the date of his benefit certificate hereinafter mentioned a member in good standing of the Order of Knights of Pythias in a subordinate lodge of said Order in the State of Alabama; that the complainant on the 15th day of January, 1890, became a member of the Endowment Rank of the Supreme Lodge Knights of Pythias in the Fourth Class, hereinafter defined, and that a benefit certificate was on said day issued to said complainant, as follows:

Endowment Rank of the Order of Knights of Pythias.

"No. 24472.

Fourth Class, \$1,000.

*Certificate of Membership.*

This certifies, that Brother Fritz Heimsoth received the obligation of the Endowment Rank of the Order of Knights of Pythias in Section No. 399 on Jany. 7", 1890, and is a member in good standing in said rank and in consideration of the representations and declarations made in his Application, bearing date of Dec. 15, 1889, which Application is made a part of this contract and the payment of the prescribed Admission Fee; and in consideration of the payment hereafter to said Endowment Rank of all Assessments as required, and the full compliance with all the laws governing this Rank now in force, or that may hereafter be enacted and shall be in good standing under said laws, the sum of one thousand dollars, will be paid by the Supreme Lodge Knights of Pythias of the World, to Bertha Heimsoth, his wife, as directed by said Brother in his application, or to such other person or persons as he may subsequently direct, b- change of Beneficiary entered upon the records of the Supreme Secretary of the Endowment Rank, upon due notice and proof of death, and good standing in the Rank at the time of death, and surrender of this certificate.

250 Provided, however, that the interest of any beneficiary, as designated by said brother, or the interest of his or her heirs, shall cease and determine in case of the death of said beneficiary during the life time of such member, and in that case the benefit accruing under this Certificate shall be paid as provided for in Article XII, Section 1, Constitution of the Endowment Rank.

Provided, further, that if at the time of the death of said brother the proceeds of one assessment on all members of the Endowment Rank, shall not be sufficient to pay in full the maximum amount of Endowment held under this Certificate, then there shall be paid, an amount, less ten per cent for expenses, equal to the proceeds of one full assessment on all remaining members of the Endowment Rank, and the payment of such sum to the beneficiaries, mentioned herein, shall be in full of all claims and demands under and by virtue of this Certificate. And it is understood and agreed that any violation of the within mentioned conditions, or the requirements of the laws in force governing this Rank, shall render this certificate and all claims null and void and that the said Supreme Lodge shall not be

188

liable for the above sum or any part thereof.

In Witness Whereof, We have hereunto subscribed our names and affixed the seal of the Supreme Lodge Knights of Pythias of the World. Issued this 15<sup>th</sup> day of Jany. 1890, P. P. XXVI at Chicago, Illinois, and registered in Book 2, Folio 190. J. A. Hinsey, President Board of Control.

Supreme Lodge Knights of Pythias August 11, 1868. Feby. 19, 1864. F. B. C.

Attest: W. B. Kennedy, Supreme Secretary of the Endowment Rank. Friendship, Dirigo.

251 I hereby accept this certificate of membership subject to all the conditions therein contained. Signature of Member:

Dated at — this — day of —, 188—.

Attest: J. F. Stubbs, Secretary Section No. 399 E. R."

And the Application of said Fritz Heimsoth was as follows:

*"Application for Membership in the Endowment Rank Knights of Pythias.*

Fourth Class.

The undersigned is desirous of becoming a member of Section No. 399 of the Endowment Rank of the Order of Knights of Pythias. This application will become part of the contract, if accepted.



## Questions to Be Answered by the Applicant for Endowment.

189

The undersigned is desirous of becoming a member of Section 399 of the Endowment Rank of the Order of Knights of Pythias. This application will become part of the contract, if accepted.

## Questions to Be Answered by the Applicant for Endowment.

1. A. Give your name in full and Post Office address.

A. Fritz Heimsoth.

B. Present and previous occupation? (State the kind of business.)

B. Present, Car Repairer. Previous, none.

C. Are you married, single or widower?

C. Married.

2. Give the place and date of your birth.

Born at Wauhnabergen, County of —, State of Hanover, the 26th day of Sep. 1859. Age at nearest birthday 30.

3. State, as far as you know, the following particulars in regard to your grand parents, parents, brothers and sisters;

## Family Record of the Applicant.

## Living.

	Age.	Health.
Father.....	..	.....
Father's father...	..	.....
Father's mother...	..	.....

## Dead.

	Age.	Cause of death.	How long sick.	Previous health.
Father.....	68	<i>Death.</i>	Don't know.	.....
Father's father...	..	Can not tell.	.....	.....
Father's mother..	..	Can't tell (Pg. 190).	.....	.....

252

## Living.

	Age.	Health.
Mother.....	..	.....
Mother's father...	..	.....
Mother's mother..	..	.....

## Dead.

	Age.	Cause of death.	How long sick.	Previous health.
Mother.....	66	<i>Death.</i>	.....	.....
Mother's father...	..	Does not know.	.....	.....
Mother's mother..	..	" " "	.....	.....

	Age.	Living.	Health.	Dead.
Brothers . . . . .	40 36		Good. "	
		Living.	Health.	
Sisters . . . . .	22		.....	

4. A. Have you now any Life Insurance or Endowment?

A. No.

B. If so, in what order or company? Give the name and amount in each.

B. ———.

C. Have you ever applied to an society, company or agent for insurance without receiving a certificate of policy? If so, state full particulars.

C. Never.

5. What amount of Endowment do you desire, \$1,000, \$2,000 or \$3,000? One Thousand.

6. A. To whom do you want the Endowment paid? Give name or names in full and Post Office Address.

A. Bertha Heimsoth, wife.

B. State the relationship of the person or persons to you?

B. 13 Penn. St., Chicago, Ills.

Note Carefully.—An applicant must designate as beneficiary, such person or persons as may be related to or dependent upon him for support; or he may name a brother Knight, his subordinate lodge of the Knights of Pythias, his Section of the Endowment Rank, or his betrothed, See Article XII, Section 1, Endowment Rank Constitution.

253 Read carefully the following declaration and agreement and observe its import:

I declare that I am not now a member of the Endowment Rank, Knights of Pythias, and have not been rejected as an applicant thereof, I declare, furthermore, that all of the above statements are true to the best of my knowledge and belief, and that I have not concealed or omitted to state anything regarding my health, past or present, affecting the expectancy of my life; and that I hereby consent and agree that any untrue statement made in this application, or to the Medical Examiner, or any concealment of facts touching my health, or expectancy of life, or for failure or neglect to pay any or all assessments and dues as prescribed by the laws of the Rank or Order, or for other causes or voluntarily severing my connection with the Order, shall work a forfeiture of all my rights, and the rights of my heirs and beneficiaries to all benefits and privileges, accruing to members of this Rank.

I hereby agree that I will punctually pay all dues and assessments for which I may become liable, and that I will be governed, and this contract shall be controlled by all the laws, rules and regulations of the Order governing this Rank, now in force, or that may hereafter be enacted by the Supreme Lodge, Knights of Pythias of the World, or submit to the penalties therein contained. To all of which I

192

willingly and freely subscribe.

Dated at Chicago this, the 1 day of Dec. 1889. (Signature of applicant:) Fritz Heimsoth.

Attest: J. F. Stubbs, Secretary of Section 399."

The complainant Fritz Heimsoth has paid to the proper officers and representatives of the Endowment Rank (and Insurance Department) of the Supreme Lodge Knights of Pythias all dues and assessments as required of him and has fully complied with all the laws governing said Endowment Rank in force at the time of the issuance of the said certificate of membership or thereafter enacted and is now under said laws in good standing as a member of said Endowment Rank or Insurance Department.

254 The intervening petitioner, W. R. Petree, in like manner became a member of the said Fourth Class of the said Endowment Rank on the 14th day of August, 1885, and a membership certificate was issued to him providing indemnity in case of his death to the beneficiary therein named in the sum of three thousand dollars. The said Petree has paid to the proper officers and representatives of the Endowment Rank (and Insurance Department) of the Supreme Lodge Knights of Pythias all dues and assessments as required of him and has fully complied with all the laws governing said Endowment Rank in force at the time of the issuance of the said certificate of membership to him or thereafter enacted and is now, under said laws, in good standing as a member of said Endowment Rank or Insurance Department. Said W. R. Petree was

193

at the time of the filing of the bill of complaint and still is a citizen of the State of Alabama.

## VI.

That in the operation of said Endowment Rank (now Insurance Department) there were formed from time to time by said Supreme Lodge Knights of Pythias different classes of membership known respectively as the First, Second, Third, Fourth and Fifth Classes; that the First Class commenced operations in 1877, the Second Class in 1877, the Third Class in 1880, the Fourth Class in 1884, and the Fifth Class January 1st, 1907; that every benefit certificate ever issued to any member of the Endowment Rank (now Insurance De-

partment) specified the particular class in which said certificate was issued and to which said member belonged.

Section 6 of Chapter 6 of the Code of By Laws of the Supreme Lodge Knights of Pythias, provided as follow:

"In the operations of the Insurance Department the membership of each Class shall be kept separated on the records from the membership of every other Class. The books and records of the Board shall show at all times the individual and total membership of each Class, and, to that extent, each Class shall be treated as a separate  
253 and distinct Society."

On April 30th, 1884, the Supreme Lodge Knights of Pythias adopted, with others, Sections 4 and 5 of Article V of the General Rank and Constitution for the Government of Sections of the Endowment Rank Knights of Pythias; said Section 4 pertains to the duties of the Supreme Secretary and said Section 5 pertains to

## 194

the duties of the Supreme Master of the Exchequer. In said Section 4 it was among other things provided as follows:

"He (the Supreme Secretary) shall also keep an account with the Supreme Master of Exchequer in each class of the endowment and the expense funds, charging him with all moneys paid to him and crediting with all orders drawn upon him, specifying in each order the fund against which it is drawn. He shall report at least semi-monthly to the Supreme Master of Exchequer and transmit therewith all moneys in his hands stating clearly what part belongs to each class of the endowment or expense funds of the rank.—He shall have charge of two funds,—an endowment fund, made up of the sum of one dollar from each and every member of the rank upon his admission and one dollar from each member at each subsequent assessment; and an expense fund made up of the receipts from the sale of supplies, of the sum of One dollar for each admission fee when one class only is applied for, but of fifty cents for each class when the first and second classes are applied for, and of the further sum of ten cents from each subsequent assessment.—He shall receive such compensation, payable out of the expense fund of the Endowment Rank as the Supreme Lodge may, from time to time, determine."

For the First, Second and Third Classes one expense fund was

## 195

maintained. When the Supreme Secretary made his semi-monthly reports to the Supreme Master of the Exchequer, he made such reports show the division of the expense fund in amount, to the credit of each class.

253 Up to March 31st, 1894, the Endowment Funds of the First, Second, and Third Classes were always kept separate; at the last named date, the endowment funds of said three Classes then on hand in cash, namely, \$86.00 were merged in the general fund of the association; at that time the total membership of the said three Classes was about one hundred.

Article 5 of the Constitution for sections of the Endowment Rank, adopted in 1884, pertains to the establishment and maintenance of the Fourth Class of the Endowment Rank.

Section 5 of the last mentioned Article 5, reads in part as follows:

"The Endowment Fund for the payment of benefits in the Fourth Class shall be derived from monthly payments by each member, said payments to be for each one thousand dollars of endowment, and to be graded according to the age of the member. — So much of such monthly payments as shall equal the actual cost of the endowment shall constitute the Endowment Fund, and the residue of such monthly payments shall be placed in the Reserve Fund."

Section 7 of the last mentioned Article 5 reads as follows:

"The Reserve Fund consisting of the membership fees and the parts of monthly payments as provided by Section 5 of this article shall be in the keeping of the Supreme Master of the Exchequer, and so much thereof as may not be needed for the payment of the expenses of this class shall be invested by him under the superintendence of the Board of Control."

## 196

Section 8 of said last mentioned Article 5 reads as follows:

"The expense of conducting the business of the Fourth Class shall be paid out of the Reserve Fund."

Section 10 of the last mentioned Article 5 reads as follows:

"All laws, forms and business details of the Endowment Rank heretofore made or hereafter enacted shall apply with full force to the Fourth Class and the members thereof so far as applicable thereto, and so far as they are not changed by the provisions of this article."

Conformably with the charter and the foregoing provisions the order subsequently adopted legislation as hereinafter stated, making changes with respects to the so-called Expense Fund.

The words Reserve Fund were applicable to the Fourth Class which at the time of its establishment and for about three years thereafter

257 had no fund which was called or known as the Expense Fund. The cost of starting and maintaining the Fourth Class was paid during the first year out of the then Expense Fund, and within a month or so after the expiration of such first year the amount was returned to the Expense Fund out of the Reserve Fund of the Fourth Class, and the same course was followed during the second year of the Fourth Class. During the third year the cost of maintaining the Fourth Class was paid from time to time out of moneys contributed by members of the Fourth Class only.

## VII.

That the basis upon which the insurance system of said Endowment Rank was first established and for a time maintained was the method of insurance known as the assessment plan, under which

## 197

assessments were levied upon the members of said First, Second and Third Classes to pay the benefits accruing under the certificates of membership held by the deceased members of said respective classes.

That the said assessment plan of insurance so originally established and maintained was discontinued in 1884, except as to the right to levy special assessments, which was reserved, and in that year a monthly payment plan of insurance was substituted therefor by proper legislation of said Supreme Lodge; this change from the assessment plan to the monthly payment plan, was in effect, brought about by the creation in 1884 of the Fourth Class of the Endowment Rank and the transfer to it in time of most of the memberships of the First, Second and Third Classes; there are now no members of the Third Class, but there are still a few members of the First Class and the Second Class. The rate of payments under said monthly payment plan was graduated according to the age of said respective members at the time of application for membership; this rate of payment was thereafter shown by experience to be inadequate to provide a sufficient fund for the payment of the death benefits agreed to be paid on the respective beneficial certificates or policies of insurance held by members of said Endowment Rank; these policies of insurance, however, issued prior to 1892, contained a stipulation substantially to the effect that until one monthly payment by members holding an equal amount of endowment less the amount placed in the reserve should be sufficient to pay the amount of endowment held by a brother, the benefit to be paid in case of death should be a sum equal to one payment by each

## 198

member holding an equal amount of endowment, less the amount to be placed in the reserve.

That the monthly installment plan so inaugurated in 1884, continued in force until 1901 at which time there was a deficit in the Mortuary Fund of the Fourth Class, which then constituted practically the entire Insurance Department of said defendant corporation, amounting to \$34,959.06, while on the same day there were outstanding and unpaid death losses amounting to \$248,500 in said Fourth Class; said 1884 rate thus proved inadequate to meet the mortuary claims accruing against said Fourth Class Mortuary Fund, and much less to provide a reserve fund sufficient to insure the payment of mortuary claims maturing in the future.

## VIII.

That in order to maintain said Fourth Class Mortuary Fund it became and was necessary in said year 1901 to further increase said rates of assessments and thereupon in said last mentioned year said defendant, Supreme Lodge Knights of Pythias, at its biennial

convention revised the rates to be paid by members if said Fourth Class, then constituting practically said Endowment Rank (Now Insurance Department) and put in force what is known as the National Fraternal Congress Table of said Endowment Rank (now Insurance Department) were rerated under said table of rates at their ages at the date of their entry and not at their attained ages and except further that of the amount collected under said table of rates fifteen per cent was set apart and used for expenses, whereas, said National Fraternal Congress Table of Rates did not contem-

199

259 plate that any sum should be deducted therefrom for expenses, but that there should be added there to a sum sufficient to meet all the expenses of said Endowment Rank (now Insurance Department) except mortuary claims; that said rates so adopted and put in force in 1901, were also inadequate and insufficient to meet death losses as they occurred and provide a proper reserve for the payment of the policies of insurance in said Fourth Class as they matured, and that by reason of said deduction of 15% and by reason of the members of said Fourth Class being re-rated at their age upon entry and not at their attained age when said re-rating took place, said rates were rendered still more inadequate and insufficient for said purposes, and that the permanent maintenance of said 1901 rates would have resulted in a few years in a deficit in said Fourth Class Mortuary Fund rendering said Endowment Rank (Now Insurance Department) unable to meet its current obligations without resorting to the expedient of frequent special assessments.

That the levying and collection of special assessments with sufficient frequency to maintain said Fourth Class mortuary fund under said 1901 rates was not practicable for the reason that, as shown by mutual life insurance experience, such a policy would have resulted in depleting the membership of said Fourth Class so as to ultimately disintegrate and destroy the same.

## IX.

That all beneficial certificates or policies of insurance issued subsequent to 1892, by said defendant and its said predecessor, provided for the payment of a fixed amount to each beneficiary without any reservation of the right in the insurer to pay any lesser sum for any reason whatever. All certificates or policies of insur-

200

ance issued to members of the Fourth Class were of the same tenor as the policy of insurance issued to Fritz Heimsoth, the complainant hereinbefore set out.

## X.

That in the summer of 1906 the officers of said defendant Supreme Lodge Knights of Pythias, including the members of the



260 Board of Control, whose duty it was to administer the affairs of said Insurance Department, recognized the inadequacy of the rates then in force to maintain the mortuary fund of said Fourth Class and for the purpose of devising and installing a plan which would permanently establish said Insurance Department on a solvent basis and provided a sufficient mortuary fund to meet not only current obligations against the same but enable said Department to accumulate, a sufficient reserve to protect all future maturing mortuary obligations and protect all members against loss employed and consulted experienced and competent actuaries to formulate and suggest to said defendant and its said officers a plan which would enable it to meet the obligations it had assumed toward the membership of said Endowment Rank (now Insurance Department) and place the same upon a basis which would enable it to carry out its existing contracts and maintain its said system of mutual beneficiary insurance.

That said actuaries so employed and consulted investigated the condition of said defendant's Insurance Department (then known as the Endowment Rank) and recommended to defendant as the best means of preserving said insurance system on a safe, solvent and permanent basis and preventing the dismemberment of its said

## 201

Endowment Rank (now Insurance Department), the establishment of a new class to be known as the Fifth Class of said Endowment Rank (now Insurance Department) the rate of Insurance in which class should be based upon rates enacted by what are known as "old line life insurance companies," except as to the expense loading, which was less than that required by said old line companies and which provided for the voluntary transfer from said existing Endowment Rank (now Insurance Department) to said Fifth Class and further provided for the establishment and maintenance of an adequate rate of insurance for those who chose to continue as members of said Fourth Class.

261 That after considering said recommendation so made by said actuaries so employed said defendant Supreme Lodge Knights of Pythias did by appropriate legislation cause to be established a Fifth Class of its said Endowment Rank thereafter to be known as the Insurance Department of said Supreme Lodge Knights of Pythias, and caused to be established what is known as a level or flat rate of insurance, which was based upon the American Experience Table of Mortality, and the rates so fixed were adequate to meet all currently accruing death claims and to provide a sufficient reserve for the maturing of every benefit certificate.

## XII.

That said 1901 rate of insurance was continued in operation as to said Fourth Class until January 1, 1911, at which time there became effective a rate previously established by said defendant, which rate was based upon the American Experience Tables of Mor-

## 202

tality, except as to expense loading which was less than that charged by old line life insurance companies, and applied to the members of said Fourth Class according to their then attained ages, and which last mentioned rate still continues in force as to said Fourth Class.

## XIII.

That upon the establishment of said Fifth Class in 1906 (effective in 1907), said defendant Supreme Lodge Knights of Pythias, through its Insurance Department, promulgated, under legislation of said Supreme Lodge authorizing the same, a plan or system of transfers, whereby members of said Fourth Class were enabled at their option to transfer their membership to said Fifth Class without medical examination upon payment of the regular rate of insurance adopted for said Fifth Class at their then attained ages, which plan or system of transferring also permits transfers from said Fifth Class to said Fourth Class upon like terms and conditions, and which plan or system of transfer has continued in force until the present time, except from April 1, 1909, to August 1, 1910, during which time members transferring were required to pass medical examinations.

262 That said defendant, Insurance Department, caused circular letters to be forwarded to all members of said Insurance Department, and as far as practicable caused personal visits to be made to said members for the purpose of explaining the reasons for the creation of said Fifth Class, as above stated, together with said plan of transfer and the advantages thereof, as hereinbefore mentioned, and invited and solicited members to transfer to said Fifth Class.

## 203

That the representations so made to said members in order to secure their transfer to said Fifth Class were in substance, that said Fourth Class was rapidly approaching a condition when it would be unable to meet its maturing obligations and ultimately would result in disintegration and dismemberment because of its inadequate rate of insurance unless it could be promptly relieved of the heavy burdens then resting upon it, represented by its outstanding certificates or policies of insurance, or means be provided to greatly enhance the resources of said Fourth Class.

That for the purpose of rehabilitating and preserving said Insurance Department and preventing ultimate insolvency thereof, and protecting all certificate holders against loss, said defendant Supreme Lodge Knights of Pythias under the aforesaid advice of expert insurance actuaries devised said plan so promulgated, including the establishment of said Fifth Class, with adequate rates of insurance provided to take care of and protect all persons so transferring against present or future loss.

## XIV.

That in the creation of said Fifth Class, and in the establishment and promulgation of said system of transfers to said Fifth Class said defendant Supreme Lodge Knights of Pythias and its Insurance Department acted in entire good faith and with the sole desire and purpose of protecting the entire membership of said Insurance Department in what seemed to said defendant and its said Insurance Department to be, and which said Master finds was, 263 the only practicable known method of relieving said Insurance Department from existing financial embarrassment and probably dismemberment and disintegration in the near future.

That all representations and inducements so made and held out to the membership of said Insurance Department respecting said plan or system, and the advisability and advantages of transferring to said Fifth Class, and all expenditures made by said defendant in furtherance of said plan, and in carrying out the same, were made and expended in good faith by said defendant and its officers for the purpose of preventing the dissolution and dismemberment of said Insurance Department on account of its heavy existing liabilities and approaching inability to meet its Mortuary expenses, all of which expenditures were made necessary by the financially embarrassed condition of the Fourth Class, and were made for its benefit and relief; that all of said representations so made were in fact true.

That it was and would have been impracticable for said defendant and its Insurance Department to have provided a sufficient fund to meet the present and future Mortuary liabilities of said Insurance Department through what is known as the Special Assessment Plan, or by an arbitrary increase of existing rates applicable to all members of said Department; and that if said plan so adopted and promulgated by said defendant embodying the creation of said Fifth Class and providing for transfers, as aforesaid, had not been adopted and carried out substantially, as above, said Insurance Department, consisting at that time practically of said Fourth Class, would have been unable to permanently maintain itself so as to meet its Mortuary obligations for more than a very few years when it would

205

have become necessary to levy, and collect such frequent special assessments as to make said insurance so burdensome as to result in the dismemberment and destruction of said Insurance Department.

## XV.

That on January 1st, 1907, there remained in good standing 264 in said Fourth Class 81,819 members; and the face amount of insurance was \$125,441,000, and during the years 1907, 1908, 1909 and 1910, 55,425 of the 81,819 members constituting the Fourth Class of said Insurance Department on January 1,

1907, as aforesaid, voluntarily transferred to said Fifth Class, and during the same period said Fourth Class Membership was depleted by death and lapses to such an extent that there remained on January 1, 1911, 8,784. members.

## XVI.

That during the year 1910 said defendant by proper legislation caused to be promulgated through its Insurance Department to the remaining members who had not transferred to said Fifth Class the following offers or options, to-wit:

Option C. To accept voluntarily the new rates as established by the legislation of 1910 for the Fourth Class.

Option D. To take in lieu of the old certificates in the Fourth Class a new benefit certificate providing for insurance for either a five or ten years' period, respectively, using the new table of rates as a basis for said term insurance.

Option E. To continue paying the old rate and to receive a new certificate for such period of time as said old rates would give the member protection, using the new rate as a basis for determining the

206

cost of insurance.

Option F. By paying the old rate and scaling the benefit certificates down to such sum as the old rate would provide insurance for during the whole period of life.

Option G. To continue paying the old rate and have charged against their benefit certificates as a lien thereon the deficiency found to be due upon each member's contract respectively, by reason of the payment of said insufficient rates.

Option H. That if unable to pay the full amount of each monthly payment, as provided for by the new rates, to have the privilege of making a monthly payment cash of so much of said rate as  
265 is required for current mortality and expense purposes, allowing the balance of said monthly rate to be charged against their certificate as a lien, which loan with 5% interest per annum should be payable at their pleasure, and if not paid during their lifetime should be deducted on their death from the face of their certificates.

That since January 1, 1911, by further death lapses and transfers to said Fifth Class said Fourth Class membership had been reduced to 2,081 members on July 1, 1921; that about 200 of this number, including the complainant and intervenor, have not accepted either of said options, but have been re-rated by said defendant Supreme Lodge Knights of Pythias according to the American Experience Tables of Mortality. That all of the residue of said 2,081 members have accepted one or the other of the foregoing options and have continued their membership thereunder until the present time.

## XVII.

That on the 31st day of December, 1906, the per capita interest of the members of the Fourth Class in the Mortuary Fund of said Class was \$14.53; and on said date the per capita interest of said Fourth Class members in the existing expense fund was \$4.82, but it is impossible to determine mathematically or otherwise what was the actual interest of the individual member.

That on the 1st day of January, 1911, the per capita interest of the then members of said Fourth Class in said Mortuary Fund was \$149.23, and \$5.60 in said expense fund, but it is impossible to determine, mathematically or otherwise, what was the actual interest of the individual member; however, during the entire period of said defendant's existence, and that of its said predecessor, it was provided by the legislation of said respective orders that no member of said Endowment Rank (now Insurance Department) had any divisible interest in either of said funds; that the increase of the per capita interest of said Fourth Class members in said Mortuary Fund and said Expense Fund was due to the establishment and operation of said Fourth Class thereto; and, especially due to the fact that said defendant in establishing and carrying out said plan and system of transfers retained for the exclusive benefit of those who elected to and did remain members of said Fourth Class the entire Mortuary Fund of said Insurance Department as it existed December 31, 1906, inasmuch as under the plan and system established and carried out by the Supreme Lodge Knights of Pythias for the creation of the Fifth Class and the transfer of Fourth Class members thereto, those members of the Fourth Class who transferred to the Fifth Class were required to relinquish and did relin-

quish upon transfer any interest that they respectively had in the Mortuary Fund of the Fourth Class.

That on the 31st day of December, 1906, there was \$394,082.25 on hand in the Expense Fund of the Insurance Department, no part of which had been contributed by the then members of the First, Second or Third Classes; that of said \$394,082.25 constituting the Expense Fund of said Insurance Department on the 31st day of December, 1906, the members of said Fourth Class, as constituted February 1st, 1911, contributed only 4%; the remaining 96% having been contributed by members of the Fifth Class who had transferred from the Fourth Class, and by former members of the First, Second, Third and Fourth Classes who had previously died or whose membership had previously lapsed.

## XVIII.

That from the organization of the Endowment Rank in 1877 down to the year ending March 31, 1886, a single Expense Fund was

kept out of which was paid all the expenses of the First, Second and Third Classes of said Rank; and from and after the organization of said Fourth Class in 1884 the expenses of the First, Second, Third and Fourth Classes were paid out of said Expense Fund down to March 31, 1886; that at the end of the fiscal years 1885 and 1886 there was taken from the Fourth Class fund what was estimated to be its pro rata part of the expense of Administration of the Endowment Rank, which amount was paid into the common expense fund of the Endowment Rank; that by the year 1887 the First, 267 Second and Third Classes respectively had but few members left therein; that from the year 1887 down to and including

209

the year 1894 there was a common expense fund kept for the First, Second and Third Classes, and a separate expense fund for the Fourth Class, and the two divisions as to the expense fund were so separated until the year 1894; that from the fiscal year ending March 31, 1894, by proper legislation of the order a single fund was maintained known as the "Endowment Fund" into which was transferred all of the funds on hand belonging to the First, Second, Third and Fourth Classes and into which all the receipts of the Endowment Rank were paid and out of which all the expenses and death losses were paid down to and including the fiscal year ending December 31, 1906, and that at no time since 1894 has there been any separate expense fund maintained or in existence for any class of said Endowment Rank (now Insurance Department); but that since 1894 down to December 31, 1906, all expenses of said Insurance Department have been paid with the full knowledge, acquiescence and consent of all the members thereof from a common fund known as the Endowment Fund to which all members contributed during said time; that subsequent to January 1, 1907, by proper legislation of the Order all expenses of said Insurance Department have been paid out of the common expense fund of said Insurance Department, and that prior to July 1, 1910, no protest had ever been made to the defendant Supreme Lodge Knights of Pythias or its Insurance Department by any member of said Insurance Department to the payment of said expenses out of said common expense fund; nor any claim made by any member of said Insurance Department prior to said last mentioned date that said expense fund belonged exclusively to said Fourth Class.

210

## XIX.

That during the time the complainant and intervening petitioner have been members of the Endowment Rank (now Insurance Department) they have contributed regularly the respective amounts 268 required of them under the rates in force prior to 1901 under the re-rating of 1901, and under the re-rating of 1910; that complainant has paid to the defendant and its predecessor \$15.90 more than enough to pay the actual cost of carrying his insurance,

as those words are technically used in the insurance business; that is to say; the cost of insurance (referred to in this finding) is the actual cost of carrying the risk without provision for any reserve or other factor; so that the complainant has not paid to the Supreme Lodge Knights of Pythias and its predecessor a sum sufficient to provide a necessary and proper reserve for maturing his benefit certificate; that in order to have maintained a proper reserve said complainant should have paid to the defendant and its predecessor \$258.64 more than the actual cost of carrying his insurance.

That the intervening petitioner, W. R. Petree, has paid to the Supreme Lodge Knights of Pythias and its predecessor \$450.15 less than the actual cost of his insurance to said defendant Supreme Lodge Knights of Pythias and its predecessor as above defined; so that, the deficiency of the intervening petitioner in his payment would be much greater if in estimating the cost of insurance there was taken into account the necessity for providing a sufficient reserve to mature his contract.

That the persons who were members of the Fourth Class of the

## 211

Insurance Department on the first day of February, 1911, contributed no part of the Mortuary Fund of the Fourth Class on hand on that day, but that all of said Mortuary Fund had been contributed by members of the Fifth Class who had therefore transferred from the Fourth Class, and members of the First, Second, Third and Fourth Classes who had theretofore died or whose membership had been lapsed.

That neither said complainant nor said intervening petitioner contributed anything to the Mortuary Fund of the Fourth Class which was on hand at any time.

269

## XX.

That since the organization of said Fifth Class the rates of insurance required to be paid by its members have at all times been and are adequate to meet accruing death claims and provide a sufficient reserve to protect existing and future policy holders against loss, and pay the face amount of their policies as they mature.

That since the establishment of the rates of insurance now required of members of the Fourth Class, effective January 1st, 1911, the rates of insurance in said Fourth Class have been and now are sufficient to enable said Fourth Class to pay its current death losses and provide a sufficient reserve to protect its policy holders and pay the face amount of their claims as they mature.

## XXI.

That said Fourth and Fifth Classes of said Insurance Department are now and were at the time complainants' bill of complaint was filed, solvent, in the sense that said word solvent is used with reference to life insurance companies and associations as going concerns.



## XXII.

At the time of the creation of the Fifth Class and on December 31, 1906, the laws of the insurance department of the defendant order provided, among other things, as follows:

The adoption of the Supreme Statutes, and the repeal of existing laws therein provided for, shall not affect any offence or act committed or done, or any penalty or forfeiture incurred, or any right established, accrued or accruing, before the Supreme Statutes take effect."

The foregoing is from the enacting clause of the Supreme Statutes adopted at the time of the creation of the Fifth Class, (laws, 1908, page 21.)

"This Society is in its Insurance Department a fraternal beneficiary Society."

S. S. 390, Sec. 3, Ch. 1, Laws 1908, p. 23.

270 "This Society in its Insurance Department shall be composed of an unlimited number of members, organized into subordinate bodies known as Sections, and whose obligations and rights and the rights of their beneficiaries are limited by the class or plan to which each member belongs."

S. S. 391, Sec. 4, Ch. 1 laws 1908 pp. 23-24.

"At the date of the adoption of these Statutes the membership of the Insurance Department (heretofore called the 'Endowment Rank') is hereby declared to be divided into three classes, viz:

(I.) The First Class composed of not to exceed four members.

(II.) The Second Class composed of not to exceed four members.

(III.) The Fourth Class composed of all other members of said Insurance Department heretofore called the "Endowment Rank."

"The obligations of the members of the said three classes, their rights and the rights of their beneficiaries, are now and have always been, measured by the laws governing the particular class to which each member belongs. A continuation of this policy is hereby declared so long as there are members of more than one class. Without in any way disturbing the status of any members of either the First, Second or Fourth Class, it is hereby declared the purpose of this society to create and establish a new class to be called the Fifth Class. Except as may be otherwise specifically provided, every and all provisions of these Statutes apply alike upon all members of the Insurance Department without regard to a division of the membership into classes."

S. S. 391, Sec. 4, Ch. 1 Laws 1908 pp. 24-25.

*without regard to a division of the membership into classes."*

*S. S. 391, Sec. 4, Ch. 1, Laws, 1908, pp. 24-25.*

"It (the Board of Control) is authorized to make special assessments upon all members of any class in the Insurance Department when in its opinion this course is necessary to be taken in order that the purposes of the Insurance Department may be carried out."

*S. S. 404, Sec. 13, Ch. 2, Laws 1908 pp. 33-34.*

"All of the funds of the Insurance Department are hereby recognized to be trust funds, the same are to be received, held, controlled and disbursed by the Board in full appreciation of their trust fund character."

*S. S. 410, Sec. 19, Ch. 2, Laws 1908, page 37.*

"Every office in the Insurance Department is hereby declared an office of trust, and every officer a trustee, and every member of the Board and every officer of the Insurance Department shall be held to strict accountability in the exercise of authority and in the performance of every duty."

*S. S. 419, Sec. 28, Ch. 2, Laws 1908, p. 41.*

"In conformity with the policy upon which the Insurance Department was organized and established and has been conducted, the membership thereof shall be continued in Classes, and each of the First, Second and Fourth Classes, in which all the members of the Insurance Department at the date of the passage of these statutes are now, shall be maintained so long as there are any members in said classes respectively."

*S. S. 460, Sec. 1, Ch. 6, Laws 1908, p. 58.*

"The Fourth Class shall be maintained as organized and as it exists on the date of the passage of this law, so long as there are any members in said Class. All members of said Fourth Class shall continue therein, subject to the same obligations and shall possess the same privileges and rights and be entitled to the same benefits as they now are, without change, enlargement or diminution, except as the Supreme Lodge shall otherwise in this code of laws specifically provide, and all laws, rules, forms and regulations heretofore enacted by the Supreme Lodge for the government of the Fourth Class and as the same were in force on the first day of October, A. D. 1906, shall, except as the same may be repealed, added to, or changed by this code of laws, and subject further to repeal, adding to, or change hereafter, shall remain in full force and effect so long as there are any members in said Class. It is hereby declared that all provisions of these Statutes relating to the Insurance Department or membership therein shall apply to and be binding upon all members of the Insurance Department at the time of the

enactment of these Statutes, and their contracts shall be governed and controlled thereby, subject to the further changes authorized in this section.

S. S. 464, Sec. 5, Ch. 6, Laws 1908, p. 60.

"In the operations of the Insurance Department the membership of each Class shall be kept separated on the records from the membership of every other Class. The books and records of the Board shall show at all times the individual and total membership of each Class and, to that extent, each Class shall be treated as a separate and distinct Society."

S. S. 465, Sec. 6, Ch. 6, Laws 1908, p. 60.

"The amounts received under the above table (table of assessments on Fourth Class members) shall be divided into two separate and distinct funds; eighty-five per cent of the receipts from payments and assessments under the above table shall be paid into and be known as the mortuary fund of the Fourth Class, and shall be used exclusively in the payment of claims incurred under certificates of membership, whether by death or otherwise, in said Fourth Class; and fifteen per cent of the receipts from payments and assessments under said table shall be paid into the expense fund of the Insurance Department."

S. S. 468, Sec. —, Ch. 6, Laws 1908, page 63.

"All of the moneys, bonds, mortgages, notes, credits, securities and properties of every kind of the Insurance Department on hand at the close of business on the thirty-first day of December, A. D. 1906, not belonging to the First or Second Classes, are hereby declared to be a trust fund; said fund and its accretions, or so much thereof as may be necessary, to be used to assist in meeting the obligations to the Fourth Class, and on the first day of January, A. D. 1907, or as soon thereafter as may be possible, the Board shall issue and publish, as of close of business December 31st, 1906, to the members of the Insurance Department, a full and complete detailed statement showing the number of members of and amount of insurance in force of each class, the liabilities and character thereof, of each class in the Insurance Department, and the amount and character of all property of every nature belonging to the Insurance Department, held for each Class, giving a detailed list of same, and generally report the condition of each Class as the same is on said thirty-first day of December, A. D. 1906."

Sec. 7, Ch. 6, Record, p. 168.

"No member of the Insurance Department shall have any divisible interest in the funds or properties of the Insurance Department, and except as provided for in these laws with respect to the members of

the Fifth Class, there shall be no apportionment of any of said funds at any time, and then only as provided for in the accounting required to be made in the Fifth Class. Except as it may appear otherwise in the accounting in the Fifth Class, no member of the Insurance Department shall have any claim whatever, during his lifetime, to any part of the funds or properties of the Insurance Department or to have any portion of same applied to the maintenance of his certificate, and then only as these statutes expressly provide respecting the accounting and lapsing of assessments, except further in the case of members of Plans 'A,' 'B' and 'D,' who may be entitled to paid up or extended insurance in the manner and to the extent in these laws provided."

S. S. 509, Sec. 10, Ch. 8, Laws 1908, p. 92.

274 "The Expense Fund of the Insurance Department shall consist of:

A. That portion of member's payments and assessments allotted to the expense fund by the Supreme Lodge, or that may be included in any table of rates as an expense loading.

B. All membership fees, fees for withdrawal and transfer cards, duplicate certificates, change of beneficiaries and all fees for supplies.

C. The increment from the expense funds that may be invested and all increment from interest earnings on the investment of the mortuary fund in excess of earnings of  $3\frac{1}{2}$  per centum per annum, on such funds as may be invested.

D. All sums which are not specifically declared mortuary funds."

Sec. 16, Ch. 8, Record, pp. 171-172.

All of the foregoing laws still remain in full force and-effect, except Section 7 of Chapter 6 above quoted which was in 1908 amended so far as to read as follows:

"All of the moneys, bonds, mortgages, notes, credits, securities and properties of every kind of the insurance department on hand at the close of business on the 31st day of December, A. D. 1906, not belonging to the first or second classes, composing the mortuary fund of the fourth class, are hereby declared to be a trust fund—said fund and its accretions, or so much thereof as may be necessary, to be used to assist in meeting the obligations of the fourth class, and shall, together with subsequent and future contributions of the members of the Fourth Class, for mortuary purposes, and the accretions thereto, constitute the mortuary fund of the fourth class.

S. S. 466, Sec. 7, Ch. 6, Laws 1908, p. 61, Record p. 172.

and Section 16 of Chapter 8 was amended in 1908 so as to read as follows:

275 "There shall be but one expense fund in the insurance department, and it shall be known as the 'expense fund of the insurance department' and shall consist of:

(a) That portion of members' payments and assessments allotted to the expense fund by the Supreme Lodge, or that may be included in any table of rates, as an expense loading.

(b) All membership fees, fees for withdrawal and transfer cards, duplicate certificates, change of beneficiaries and all fees for supplies.

(c) The increment from the expense fund that may be invested and all increment from interest earnings on the investment of the mortuary fund in excess of earnings of  $3\frac{1}{2}$  per centum per annum on such funds as may be invested.

(d) All sums which are not specifically declared mortuary funds."

S. S. 515, Sec. 16, Ch. 8, Laws 1908, pp. 95-96.

#### XXIV.

That by the general laws governing the Endowment Rank of the defendant's predecessor, adopted in 1880, it was provided among other things by Section 1 of article 1, that the Supreme Lodge "Possesses the power in accordance with the laws of the order to establish the Endowment Rank," and by section 7 of article 1 "to create, hold and disburse the funds named in the objects of the rank under such regulations as it may be deemed necessary to adopt."

And it was further provided by section 4 of article 6 that "these laws may be altered or amended at any regular session of the Supreme Lodge Knights of Pythias."

That said provisions above set forth were re-enacted in the gen-

#### 217

eral laws for the government of the Endowment Rank in 1884, except that section 4 of article 6 was amended to read as follows:

"These laws may be altered or amended at any regular session of the Supreme Lodge Knights of Pythias by a two-thirds vote."

That said laws continued in force until 1886 when they were re-enacted, and said re-enacted provisions continued in force until 1888 when they were again re-enacted; that the provisions of the laws of 1888 continued in force until 1890, when they were again re-enacted, except the provision with reference to amendment, which was amended to read as follows: "The provisions of these general laws may be altered or amended at any regular session of the Board of Control of the Endowment Rank Knights of Pythias of the World."

That in 1892 it was provided by the general laws for the government of the Endowment Rank by article 1 of Section 1, that the Supreme Lodge Knights of Pythias "possesses the power in accordance with the laws of the Order, to establish the Endowment Rank and create a Board of Control for the governing thereof as herein-after provided"; and by section 1 of article 5: "These laws may be altered or amended at any regular session of the Supreme Lodge Knights of Pythias of the World by a two-thirds vote."

That said laws of 1892 were again re-enacted in 1894 and 1896 except that the provisions with reference to amendment was amended

to read as follows: "These laws may be altered or amended at any regular convention of the Supreme Lodge Knights of Pythias in accordance with the provisions of the Supreme constitution and Supreme statutes."

## 218

That the laws of 1898, 1900 and 1901 are a re-enactment of those of 1896.

That by the laws of the defendant Supreme Lodge Knights of Pythias governing the Insurance Department enacted in 1906, it is provided:

"The laws of the order as herein enacted, with any and all amendments thereto hereafter enacted by the Supreme Lodge, and all rules and regulations of the Board of control as the same exist, or may from time to time, be adopted; shall be and constitute a part of the contract of insurance between the members of the insurance department and such department and shall be binding upon such members."

That prior to the revision of the laws of 1894 it was provided that whenever one monthly assessment by members holding an equal amount of Endowment should not be sufficient to pay the amount of Endowment held by a member the benefit to be paid in case of death should be a sum equal to one assessment by each member holding an equal amount of endowment.

That in 1894 the provision with reference to the payment of the proceeds of one assessment in lieu of the face of the certificate was not re-enacted and was repealed; that said provision last above set forth continued in force until 1901 when a new table of rates was adopted for all members of the Endowment Rank, and the following provision was enacted:

"Section 4. Each applicant for membership in the Endowment Rank, shall upon completion of his application for transmission to the Board of Control, pay to the Secretary of the Section in accordance with his age, occupation and the amount of endowment applied for, a monthly payment as provided herein, and as provided in Section 5 of this Article, and if accepted each member shall continue to pay the same amount each month thereafter as long as he remains a member of the Endowment Rank, except as provided in Section 6 of this Article, or unless otherwise provided for by enactments of the Supreme Lodge or Board of Control of the Endowment Rank Knights of Pythias; and every person who is at present a member of the Endowment Rank shall pay each month hereafter,

## 219

as long as he remains a member of the Endowment Rank, monthly payments as fixed by the table herein in accordance with the age at which he has been immediately heretofore rated and in accordance with the amount of his endowment and in accordance with his occupation as provided in Section 5 of this Article so long as he shall remain a member of the Endowment Rank, except as provided in Section 6 of this Article or unless otherwise provided by enactment

of the Supreme Lodge, or Board of Control of the Endowment Rank Knights of Pythias."

The section last above set out continued in force until 1906 when it was provided that each member of the Fourth Class should continue thereafter to pay monthly payments as set out in said constitution "unless otherwise provided for by enactments of the Supreme Lodge or Board," and that each member of the Fifth Class should pay the rates set out in said constitution so long as the monthly rates shown in the following table shall remain in force, except as stated in these statutes and unless otherwise provided for by enactments of the Supreme Lodge or Board."

. That said provisions last above set out have remained continuously in force and have never been amended, revoked, annulled or superseded.

278

XXV.

That the Fifth Class of the Insurance Department was established by legislation of the Supreme Lodge in 1906, and commenced operation on the first day of January, 1907; that neither complainant or intervening petitioner ever made any protest or objection to the defendant or any of its officers or agents with reference to the maintenance of a joint expense fund or against the payment of all the expenses of the Insurance Department out of said fund prior to January 1911; that no member who remained in the Fourth Class

220

of the Insurance Department ever made any such protest until December 1910, when two members of the Fourth Class wrote letters in which they complained of the action that had been taken in 1907; that the two members last referred to subsequently transferred to the Fifth Class of the Insurance Department; that never until January 1911 did the complainant or any other member of the Insurance Department demand any accounting from the defendant or its Board of Control with reference to the joint Expense fund of said Insurance Department.

That during the year 1907, 1908, 1909, and 1910, the Board of Control expended \$1,781,212.92 from the Expense Fund of the Insurance Department in the payment of expenses of both the Fourth and Fifth Classes of said Department, without making any attempt to separate the items of expenditure between the two classes; that during the same years, to wit, 1907, to 1910, both inclusive, 55,425 persons carrying insurance of more than \$81,000,000 transferred from the Fourth to the Fifth Class in pursuance of the legislation of the Order, that from the first day of January, 1907, continuously down to and including the date of the commencement of this action there was published by the defendant a Journal known as the "Knights of Pythias News" which was mailed monthly during all of said time to each and every member of the Insurance Department, including this complainant; that from 1907 on full publicity was given the said Knights of Pythias News of the fact that a joint



Expense Fund was being maintained for the Fourth and Fifth Classes of the Insurance Department, of which all of the expenses of said two classes were being paid, and to the fact that members were transferring in large numbers from the Fourth to the Fifth Class of said Insurance Department; that an

221

itemized list of the expenditure of said Insurance Department from said common expense fund was published quarterly in each of said years.

That both the complainant and the intervening petitioner were fully advised and knew that such Common Expense Fund was being maintained; that all of the expenses of both classes were being paid out of said Common Expense Fund, and that thousands of members were transferring from the Fourth to the Fifth Class of the Insurance Department under the plan adopted by the defendant, and that both complainant and the intervening petitioner had this knowledge at a time subsequent to January 1, 1910 and prior to November, 1910.

## XXVI.

That at its regular biennial session, of the Supreme Lodge in 1906, there was also adopted the following statute with reference to the Expense Fund of the Insurance Department hereinbefore set out in Finding XIII, namely:

"Sec. 16. The Expense Fund of the Insurance Department shall consist of:

A. That portion of members' payments and assessments allotted to the expense fund by the Supreme Lodge or what may be included in any table of rates as an expense loading.

B. All membership fees, fee for withdrawal and transfer cards, duplicate certificates, change of beneficiaries and all fees for supplies:

C. The increment from the expense funds that may be invested, and all increment from interest earnings on the investment of the mortuary fund in excess of earnings of  $3\frac{1}{2}\%$  *per centum* per annum, on such funds as may be invested.

D. All sums which are not specifically declared Mortuary Funds.

That said section last above set out has remained continuously in force to the present time and has never been amended, repealed

222

or superseded. That at the time the same was adopted the Expense Fund had never at any time been treated as a Mortuary Fund and has never so been treated since the adoption of said section, and that there was nothing in the legislation of 1906 or any prior or subsequent legislation designating said Expense Fund as a Mortuary Fund.

That section 7, *supra*, was amended at the biennial convention of the defendant in 1908, to read as follows:

"Sec. 7. All of the moneys, bonds, mortgages, notes, credits, securities and properties of every kind of the insurance department on hand at the close of business on the 31st day of December, A. D. 1906, not belonging to the first or second classes, composing the mortuary fund of the fourth class, are hereby declared to be a trust fund \* \* \* said fund and its accretions, or so much thereof as may be necessary, to be used to assist in meeting the obligations of the fourth class, and shall together with subsequent and future contributions of the members of the fourth for mortuary purposes, and the accretions thereto, constitute the mortuary fund of the fourth class," as stated hereinbefore in Finding XXII.

That said section last above set forth has remained continuously in force since 1908.

That it was provided in the legislation of 1906 of the defendant that each class of the Insurance Department should to the extent of a separation of its membership in a class, be treated as a distinct society; that of the amounts received from the Fourth Class members 85% should be paid into and be known as the "Mortuary Fund of the Fourth Class," and 15% paid into "The Expense Fund;" that of the amounts paid by the Fifth Class members that part of the monthly payment equal to the mortuary cost of carrying the risk should be paid into a fund known as the "Mortuary Fund of the Fifth Class," and the remainder should be placed in "The Expense Fund to be used for paying the expenses of the Insurance Department."

## 223

That said provisions last above set forth have continued in full force and effect to the present time; that all of said legislation set out and referred to in this finding was adopted as a part of the general plan and scheme for the creation of the Fifth Class of said Insurance Department, the transfer of members from the Fourth Class to The Fifth Class, and the use of the Expense Fund for the payment of the joint expenses of the Fourth and Fifth Classes of said Insurance Department.

## 281

## XXVII.

Pursuant to the mandate of Section 7 of Chapter 6, Supreme Statutes 466, enacted at the time of the creation of the Fifth Class, which ordered the Board of Control as soon as possible after January 1, 1907, to issue and publish to the members the amount and character of all property of every nature belonging to the Insurance Department held for each class, the Board of Control did in the February issue of the Official publication of the order report and publish to the membership of the Order that on December 31, 1906, the assets of the Fourth Classes were \$1,791,296.17, which sum was ascertained by adding to the gross sum in the mortuary fund the \$394,082.25 which constituted the expense fund on hand December 31, 1906.

On and after January 1, 1907, when the Fifth Class became effective, and at all times up to the filing of the bill herein, the board of control and its officers at all times were engaged in a systematic

effort to induce the members of the Fourth Class to renounce and abandon their membership in the Fourth Class and take certificates of membership in the Fifth Class, and no effort was made at any time

224.

during the period above stated to secure any new members for the Fourth Class. A large number of members of the Fourth Class did transfer to the Fifth Class as hereinbefore is stated in detail.

In general the younger members transferred to the Fifth Class and the older members remained in the Fourth Class, so that the net result of the transfer was that the average age of the members of the Fourth Class was increased 11.29 years by the transfer.

During the four years, 1907 to 1910 inclusive, there was paid to agents employed in this work, called "superintendents," the sum of \$633,252.65. The other expenses of the order were considerably increased by reason of the upbuilding of the Fifth Class, so that, whereas the total expenses of the order for the four years 1903 to 1906 inclusive had been \$1,239,838.88 the total expenses of the order for the four years 1907 to 1910 inclusive were \$1,781,112.92.

282

## XXVIII.

The members of the Fourth Class who surrendered their membership therein and took certificates of membership in the Fifth Class did so pursuant to Section 25 of Chapter 6 of the Supreme Statutes enacted as a part of the plan for the creation of the Fifth Class and pursuant to an application of transfer. The section of the Supreme Statutes above referred to reads as follows:

"All members of the Fourth Class who may desire to transfer their membership to the Fifth Class shall, as a matter of right, be entitled to make such transfer before the first day of January A. D. 1909, without expense or medical examination, but upon making such transfer they shall surrender their benefit certificates in the Fourth Class and shall be admitted as members in said Fifth Class and rated at their attained ages at date of such transfer, and in all other respects such transferring members shall be regarded as new members of the Insurance Department. On and after January 1st, A. D. 1909, members of the Fourth Class desiring to transfer to the Fifth Class shall be subject to the same requirements as

225

are all applicants for membership in the Insurance Department."

Every transferring member signed an application which, among other things, contained the following:

"I attach and surrender Certificate No. — dated — —, —, for — dollars for the purpose of having same cancelled upon the issuance to me of a certificate or certificates in lieu thereof, in accordance with this application."

## XXIX.

That the legislation of the defendant Supreme Lodge Knights of Pythias with reference to the creation of the Fifth Class, the transfer of members from the Fourth to the Fifth Class, the re-rating of the Fourth Class, which became effective January 1st, 1911, and the use of the expense fund of the Insurance Department for the joint expenses of the Fourth and Fifth Classes, was all duly and legally adopted by the said defendant in pursuance to the constitution and laws of said defendant and in accordance with the mode therein prescribed for the adoption of amendments and the enactment of new legislation.

## XXX.

283 That of the total number of persons who were members of the Fourth Class at the time the re-rating of 1910 became effective, to-wit, January 1, 1911, one hundred and seventy-five persons made tenders to the defendant of their old rates of contribution under the rates established in 1901, and that no dissatisfaction has ever been expressed by any person who was ever a member of the Insurance Department of the Supreme Lodge, except by said one hundred and seventy-five members, with the legislation creating the Fifth Class and authorizing the transfer of members from the Fourth Class to said Fifth Class.

226

## XXXI.

The laws of the defendant Supreme Sitting Knights of Pythias have never recognized as to any of its classes of members at any time during its history the right of any member to have any divisible interest in the funds or properties of the class to which he belonged or the funds or properties of the endowment rank or insurance department, nor has any member of any class at any time been given or attempted to be given by the defendant Supreme Sitting Knights of Pythias any divisible interest in the funds or properties of his class or the endowment rank of insurance department; but, it has always been the fundamental law and practice of the said Supreme Sitting Knights of Pythias that upon ceasing to pay the dues or assessments required by the laws of the order a member lost or forfeited all his interest in the funds and properties of the endowment Rank or Insurance Department.

Section 10, of Chapter 8 of the laws governing the Insurance Department as printed in the edition of 1908 bears upon this subject and the same is as follows:

"Sec. 10. No member of the Insurance Department shall have any divisible interest in the funds or properties of the Insurance Department, and, except as provided for in these laws with respect to

the members of the Fifth Class, there shall be no apportionment of any of said funds at any time, and then only as provided for in the accounting required to be made in the Fifth Class. Except as it may appear otherwise in the accounting in the Fifth Class, no member of the Insurance Department shall have any claim whatever, during his lifetime, to any part of the funds or properties of the Insurance Department, or to have any portion of same applied to the maintenance of his certificate, and then only as these statutes expressly provide respecting the accounting and lapsing of assessments, except further in the case of members of Plans "A" "B" and "D" who may be entitled to paid up or extended insurance in the manner and to the extent in these laws provided."

## 227

The original expense fund of \$394,082.25 on hand December 31, 1906, amounted with its accretions on January 1, 1912, to \$504,159.94. These accretions consisted of the following:

*Interest on Expense Fund.*

1907.....	\$12,896.08
1908.....	12,030.18
1909.....	11,694.26
1910.....	16,138.36
1911.....	9,927.97

*Excess Interest Earnings on Mortuary Fund Over — Per Cent of Interest Applicable to That Fund.*

1907.....	\$12,896.18
1908.....	8,178.07
1909.....	9,446.18
1910.....	6,900.51

The contributions of the members of the Fourth Class for expense purposes for the years 1907 to 1910 inclusive, were as follows:

1907. Contributions.....	\$308,389.36
1908. Contributions.....	198,094.67
1909. Contributions.....	106,050.02
1910. Contributions.....	87,345.30
Total.....	699,879.35

During the year 1910, the members of the Fourth Class contributed 20½ per cent of the Expense Fund and the members of the Fifth Class contributed 79½ per cent of the Expense fund; the above mentioned sum of \$87,345.30 is 20½ per cent of the total Expense Fund received by the Insurance Department during the year 1910.

## XXXIII.

There was on hand December 31, 1912, in the net expense fund \$325,214.06 and in the net mortuary fund of the Fifth Class \$4,094,243.09.

At its Biennial Convention of 1912, held in the summer that year, the Supreme Lodge, Knights of Pythias adopted a resolution containing the following, which thereafter became effective, viz:

The Board of Control is authorized to transfer any part of the expense fund to the Mortuary Fund whenever, in its judgment, it is deemed advisable.

## XXXIV.

On January 30, 1911, the following resolution was adopted at the meeting of the Board of Control, namely:

"Whereas the annual accounting from the Consulting Actuary of the Insurance Department, Knights of Pythias, shows that said Insurance Department has on hand a Mortuary Surplus sufficient to waive one monthly payment, and

"Whereas, the Expense Fund has grown to such an amount that we deem it advisable and just that a sufficient amount shall be transferred from said Expense Fund to waive one monthly payment on the membership for the said Fifth Class, to-wit, about \$—.

Therefore, be it resolved that this amount be used for the purpose of waiving one monthly assessment and be it further resolved that the same pro-rata of contribution that made up the expense fund of 1910 shall be transferred to the Fifth Class."

Acting upon that resolution, the administrative officers of the Insurance Department caused during the year 1911, the sum of \$153,177.77 to be transferred from the general Expense Fund to the

Mortuary Fund of the Fifth Class and in like manner caused, during the year 1911, the sum of \$38,294.42 to be transferred to the Mortuary Fund of the Fourth Class; the amounts so transferred were arrived at on the basis of the respective contributions of the Fourth Class and of the Fifth Class to the Expense Fund in 1910, namely, the Fourth Class contributed 20½ per cent. and the Fifth Class contributed 79½ per cent.

## XXXV.

The matter and amount in controversy in this suit, exclusive of interest and costs, exceeds the sum or value of Two Thousand Dollars.

286 All of the assets constituting the Endowment Funds of the Fourth and Fifth Class- and the Expense Fund of the Insurance Department of the Supreme Lodge Knights of Pythias, are in the custody and manual possession of the Officers of the Board of Control of the Supreme Lodge Knights of Pythias in the City of Indianapolis, Indiana, and within the jurisdiction of the District Court of the United States for the District of Indiana.

None of the officers of the defendant Supreme Lodge Knights of Pythias and none of the members of the Board of Control of the Insurance Department reside within the District of Columbia; none of the property of said Insurance Department is kept within the District of Columbia; neither said Supreme Lodge or said Insurance Department maintain any office within the District of Columbia for the transaction of the general business of said Supreme Lodge or the Insurance Department thereof; no service of process can be had upon said Supreme Lodge or any of the officers thereof, or any

230

members of the Board of Control of the Insurance Department, or any of the officers thereof, within the District of Columbia, and if this suit were to be brought in the District of Columbia and service of process had upon said Supreme Lodge and a decree entered granting any of the relief prayed for, there would be no way by which courts of the District of Columbia could enforce such decree.

## XXXVI.

That at the time of the commencement of this action and continuously ever since there has been and now is in the common or general expense fund of the Insurance Department a sum largely in excess of that required to meet or which probably will be in the future required to meet the expenses of said Insurance Department and of all classes thereof.

That for the years 1907 to 1911 both inclusive the members of the Fourth Class contributed to said expense fund the total sum of \$715,169.57 and for the same period the members of the Fifth Class contributed to said expense fund the total sum of \$997,438.61.

287 That the contributions of the members of said Fourth Class and Fifth Class respectively to said common expense fund, during said years 1907 to 1911 inclusive, have been to each other, in the proportion of seventy-one and seven-tenths by the Fourth Class to one hundred by the Fifth Class; and that a distribution of the excess sum in said expense fund, on the same basis or proportion would be just, fair and equitable, and accordingly, instead of distributing to said Fourth Class Mortuary Fund \$38,294.42, which was the amount so distributed, there should have

231

been distributed to said Fourth Class Mortuary Fund the sum of \$108,818.46 which sum is seventy-one and seven-tenths per cent. of



the sum distributed to the Fifth Class Mortuary Fund, to-wit: \$153, 177.77.

In order, therefore, to proportionately equalize the sum so distributed to said Fifth Class, there should now be distributed to the Mortuary Fund of said Fourth Class the sum of \$71,534.04 and said last named sum can be safely taken from said common expense fund in addition to the sums already distributed and still leave a sufficient balance therein to meet all the probable current and future expenses of said Insurance Department.

Upon the foregoing facts, said Master, makes and states the following:

*Conclusions of Law.*

Upon the original Bill of Complaint, the equities of the case are not with the complainant, the intervening petitioner or any other members of the Fourth Class of the Endowment Rank, now Insurance Department, of the Supreme Lodge Knights of Pythias, and neither the complainant, the intervening petitioner, nor any other member of the Fourth Class of said Insurance Department is entitled to any relief upon said original bill of Complaint; but in respect to the complainant's supplemental bill of complaint, the equities are with the complainant, and he is entitled to a decree of the Court requiring said defendant through its said Insurance Department to transfer from the general or common expense fund of said Department to the Mortuary Fund of the Fourth Class of said Insurance

Department the sum of \$71,534.04 in addition to the sum of 288 \$38,294.42 heretofore transferred to the Mortuary Fund of said Fourth Class. Accordingly such a decree is recommended. Respectfully submitted, Edward Daniels, Master in Chancery.

232

That thereafter (the time for filing exceptions to said report having expired and no exceptions thereto having been filed), to-wit, on the 24th day of March, 1913, the Court rendered a decree therein in words and figures following, to-wit:

"In the District Court of the United States for the District of Indiana

In Chancery. No. 11129.

FRITZ HEIMSOOTH, Complainant,

v.

THE SUPREME LODGE, KNIGHTS OF PYTHIAS, et al., Defendants.

Now, on this 24th day of March, 1913, this cause came on to be heard and the complainant, Fritz Heimsooth, and the intervening petitioner, W. R. Petree, came by Casius C. Hadley and L. A. Stebbins, their attorneys, and the defendants except Ulysses S. G. Cherry appeared by James P. Goodrich and Miller, Shirley, Miller & Thomp-

son, their attorneys, and thereupon said defendants moved the Court to confirm and approve the report of the Master filed herein on the 18th day of February, 1913, and for a final decree in conformity with said report of said Master.

Whereupon the Court, after examining the report of the Master and hearing the Statements and arguments of counsel and being fully advised in the premises, finds that the report of the Master both as to the facts found and conclusions of law stated thereon is in all respects correct, and that the same should be confirmed and approved.

289 And thereupon, upon consideration thereof, it was and is hereby ordered, adjudged and decreed as follows, viz: That the report of the Master herein be, and the same is, hereby in all things confirmed and approved and in conformity with the report of the Master it is further ordered, adjudged and decreed that upon said original bill of complaint the equities of the case are not with the complainant, the intervening petitioner or any other member or members of the Fourth Class of the Endowment Rank, now Insurance Department, of the Supreme Lodge Knights of Pythias, and neither the complainant, the intervening petitioner nor any other member of the Fourth Class of said Insurance Department is entitled to any relief upon said original bill of complaint, which is accordingly dismissed for want of equity; that in respect to the complainant's supplemental bill of complaint, the equities are with said complainant and said intervening petitioner and other members of said Fourth Class similarly situated and that the complainant and said intervening petitioner and said other members of said Fourth Class similarly situated are entitled to a decree of this Court requiring the defendant Supreme Lodge Knights of Pythias through its Insurance Department and the other defendants, including the defendant Ulysses S. G. Cherry, as officers thereof, to transfer from the general or common expense fund of said Department to the mortuary fund of said Fourth Class of said Insurance Department the sum of seventy-one Thousand Five Hundred Thirty-four and 4/100 Dollars (\$71,534.04) in addition to the sum of Thirty-eight Thousand Two Hundred Ninety-four and 42/100 Dollars (\$38,294.42) heretofore transferred from said common expense fund to the mortuary fund of said Fourth Class, less the amount hereinafter allowed to counsel for complainant and intervening petitioner for services and expenses.

## 234

It is therefore further ordered, adjudged and decreed that said defendant Supreme Lodge Knights of Pythias through and by its Board of Control of the Insurance Department of said Supreme Lodge and the other defendants herein, including the defendant, Ulysses S. G. Cherry, as officers thereof, do forthwith transfer  
290 from the common expense fund of said Insurance Department of said Supreme Lodge Knights of Pythias to the Mortuary Fund of the Fourth Class of the Supreme Lodge Knights of Pythias, to be used as a part of the Mortuary Fund of said Fourth

Class of the Insurance Department of the Supreme Lodge Knights of Pythias, said sum of seventy-one Thousand Five Hundred Thirty-four and 4/100 Dollars (\$71,534.04) less the amount of said allowances, either in cash or securities of the value of said sum, and that the said defendant, Supreme Lodge Knights of Pythias, pay the costs of this proceeding.

Now on this same day this cause came on for hearing also upon the motion of the solicitors for the complainant and intervening petitioner for an allowance out of said Seventy-one Thousand Five Hundred Thirty-four and 4/100 Dollars (\$71,534.04) for their services in the prosecution of this suit and to reimburse them for necessary expenses incurred in and about the prosecution of the same.

And counsel for complainants and intervening petitioner now show to the satisfaction of the Court that the amount of expenses so incurred is Two Thousand Fifty-five and 55/100 Dollars (\$2,055.55) which expenses counsel for complainant and intervening petitioner agree to pay in full out of the allowance herein made.

And the Court, after hearing the statements of counsel and the evidence and the arguments of the respective counsel and being fully

## 235

advised in the premises, finds that counsel for the complainant and intervening petitioner are entitled to an allowance out of said Seventy-one Thousand Five Hundred Thirty-four and 4/100 Dollars (\$71,534.04) for their services and expenses in the sum of Ten Thousand Dollars (\$10,000.00) for all of said purposes, to-wit: Seven Thousand Nine Hundred Forty-four and 45/100 Dollars (\$7,944.45) for services and Two Thousand Fifty-five and 55/100 Dollars (\$2,055.55) for said expenses.

It is therefore ordered, adjudged and decreed that counsel for complainant and intervening petitioner be, and they are hereby allowed the sum of Ten Thousand Dollars (\$10,000.00) for 291 their services and to reimburse them for expenses so incurred in and about the prosecution of this suit, and the defendant Supreme Lodge Knights of Pythias is hereby ordered and directed to pay upon proper receipt to the solicitors for the complainant and intervening petitioners said sum of Ten Thousand Dollars (\$10,000.00) in full for their services and to reimburse them for said expenses as aforesaid, all of which expenses not heretofore paid by counsel for complainant and intervening petitioner, they are hereby ordered and directed to pay out of said allowance.

## 236

## XIII.

Said defendant further shows unto your Honor that said decree so entered has never been modified, reversed or appealed from but is in full force, virtue and effect.

Said defendant further avers that the cause of action herein sued upon, in so far as the same pertains to the alleged wrongful disposition and misuse of said expense fund, amounting to \$394,082.25 and

all accretions thereto, is the identical cause of action as that sued on by said Fritz Heimsoth for the benefit of the members of said Fourth Class above mentioned and that the same is between the same parties in that both of said suits are prosecuted on behalf of the members of said Fourth Class in like situation and that with respect to the fund so alleged to have been misused said respective parties were and are in like situation, and said Supreme Lodge Knights of Pythias is defendant in both; that by its terms the bill of complaint in this cause is exhibited on behalf of all members of the Fourth Class in good standing January 1, 1911, and that said complainant Heimsoth and said intervening petitioner W. R. Petree were both members in good standing in the Fourth Class of said Insurance Department on the first day of January, 1911; that said Fourth Class of said Insurance Department (sometimes described as "Endowment Rank" on behalf of which said Fritz Heimsoth sued in said action wherein he was plaintiff, is the same as the fourth class of said Insurance Department described in the bill of complaint and answer in this case; that said Supreme Lodge Knights of Pythias, defendant in said suit, so instituted by said Fritz Heimsoth, is the same corporation as said the Supreme Lodge Knights of Pythias, defendant in this suit; and that said expense fund so alleged in said suit so prosecuted by said Fritz Heimsoth to have been misappropriated and misused, is the same expense fund as that alleged to have been misappropriated and misused by the Insurance Department of said defendant,

237

The Supreme Lodge Knights of Pythias in this case; and that the issues both of law and of fact raised by the pleadings in said respective suits with reference to the use and disposition of said expense fund are the same in both cases.

Wherefore, said defendant avers that since this case was put at issue the matters in dispute between the parties hereto with respect to the use and disposition of said expense fund, amounting on the first day of January, 1907, to \$394,082.25, and all accretions thereto have become and are res adjudicata and said complainant ought not to be permitted further to prosecute this suit in so far as any matters touching the use and disposition of said expense fund are concerned; and said defendant humbly prays this honorable Court to grant a writ of subpoena requiring the defendants to this cross-bill to answer the same but not under oath (answer under oath hereto being hereby expressly waived) and upon the final hearing to enter its decree dismissing said bill of complaint in so far as the same alleges any matters concerning the disposition and use of said expense fund and that the complainants be perpetually prohibited and enjoined from further prosecuting this action in that behalf and from instituting or prosecuting any other suit either at law or in equity for the recovery on behalf of said Fourth Class or otherwise or seeking any relief whatever with respect to the use or disposition of said expense fund or any part thereof or any accretions thereto.

238 And will the Court grant such other and further relief in the premises as may seem agreeable to equity and good con-

science. J. P. Goodrich, Miller, Shirley, Miller & Thompson, solicitors for Cross complainant. W. H. Thompson, Of Counsel.

238

STATE OF INDIANA,  
*Marion County, ss:*

Walter C. Powers, being duly sworn, upon his oath says he is the Secretary of the Insurance Department of said defendant, The Supreme Lodge Knights of Pythias; that he has read the foregoing cross-bill of complaint and is acquainted with the contents thereof, and that the facts stated therein are true, in so far as he has personal knowledge thereof, and that as to the facts stated therein of which he does not have personal knowledge, he is informed and believes them to be true. Walter C. Powers.

Subscribed and sworn to before me this 10th day of April, 1913.  
Lou A. Robertson, Notary Public. (Seal.) My commission expires Nov. 26. 1916.

239

And afterwards, to-wit: at the November Term of said Court, on the 24th day of April, 1913, before the Honorable Albert B. Anderson, judge of said court, the following further proceedings in the above entitled cause were had, to-wit:

Come now the complainants by Messrs. Lazarus, Michel and Lazarus and Messrs. Miller & Dowling, their solicitors, and file their answer to the cross-bill herein, in the words and figures following, to-wit:

240

## 294 COMPLAINANTS' ANSWER TO CROSS-BILL OF COMPLAINT.

The complainants, Joseph Holt, Victor Mauberret, Ross Carlin, Frank Ribera, William R. Smith, John B. Chisolm, Henry A. Weber, David Lemley, Edward F. Denedhaud, James A. Doubles, Joseph E. Jolet, Moses Heidingsfelder, Thomas Carey, Louis Schreck, Philip Rahn, Joseph I. Barnett, John Leckert, T. Sidney Weber, David R. Graham, and Lewis Fishel, defendants to the cross bill of complaint herein, now and at all times hereafter reserving to themselves all and all manner of benefit of exception or otherwise that can or may be had or taken to the many errors, uncertainties and imperfections in said cross bill of complaint contained, for answer thereto or to so much thereof as they are advised it is material or necessary for them to make answer to, answering, say:

I. Said complainants admit that on the 27th day of January, 1911, one Fritz Heimsoth, purporting to act on behalf of himself and all other members of the Fourth Class of the Insurance Department

241

of the Supreme Knights of Pythias, filed his bill of complaint in the Circuit Court of the United States for the District of Indiana, against

the Supreme Lodge Knights of Pythias, in manner and form as alleged in said cross bill of complaint.

II. Said complainants admit that on the 16th day of March, 1911, said Supreme Lodge Knights of Pythias, together with its co-defendants except Ulysses S. G. Cherry, filed answer to said bill of complaint in manner and form as alleged in said bill of complaint.

III. Said complainants admit that on the 22nd day of March, 1911, the complaint filed its general replication to said answer in manner and form as alleged in said cross bill of complaint.

IV. Said complainants admit that on the 10th day of April, 1911, said cause was referred to Edward Daniels, Master in Chancery of said Court with instructions to report his findings of fact, and state conclusions of law thereon to said Court.

295 V. Said complainants admit that on the 15th day of April, 1911, a decree pro confesso was entered in said cause against Ulysses S. G. Cherry, in manner and form as alleged in said cross bill of complaint.

VI. Said complainants admit that on the 22nd day of May, 1911, defendants in said action, except said Cherry, filed an amendment to their answer to said bill of complaint, in manner and form as alleged in said cross bill of complaint.

VII. Said complainants admit that on the 18th day of December, 1911, said Fritz Heinsoth filed a supplemental bill of complaint in said cause, in manner and form as alleged in said cross bill of

242

complaint.

VIII. Complainants admit that on the 21st day of December, 1911, said defendants, except said Cherry, answered said supplemental bill of complaint in manner and form as alleged in said cross bill of complaint.

IX. Complainants admit that on the 12th day of January, 1912 defendants, except said Cherry, amended their said answer in manner and form as alleged in said cross bill of complaint.

X. Complainants admit that on the 17th day of January, 1912, said defendants except said Cherry, amended their answer and supplemental answer in manner and form as alleged in said cross bill of complaint.

X½. Complainants admit that after said cause was referred and ruling the hearing thereof, one W. R. Petree intervened in said cause and filed the intervening petition set forth in said cross bill of complaint, and *there* thereupon, all parties to said cause, except Ulysses S. G. Cherry, entered into the stipulation set forth in said cross bill of complaint.

XI. Complainants admit that said Master in Chancery heard evidence in said cause, and duly filed his report therein on the 18th day of February, 1913, and that said report was in the words and figures shown by the said cross bill of complaint.

296 XII. Said complainants admit that on the 24th day of March, 1913, a decree was rendered in said cause, in the words and figures set forth in the said cross bill of complaint.

XIII. Said complainants admit that said decree so entered, has not been modified, reversed or appealed from, but is in full force and effect. Said complainants further admit that the cause of action

243

sued upon by them in the cause wherein said cross bill of complaint has been filed, pertains in part to an alleged wrongful disposition and misuse of certain expense funds amounting to \$394,082.25, and that said action instituted by said Fritz Heimsoth and others against Supreme Lodge Knights of Pythias, also pertained to the alleged wrongful disposition and misuse of the same expense funds; that, both of said actions were against the Supreme Lodge Knights of Pythias; that the bill of complaint of these complainants was filed on behalf of all members of the Fourth Class in good standing January 1st, 1911, and these complainants are informed and believe that said Fritz Heimsoth and W. R. Petree were both members in good standing in the Fourth Class of said Insurance Department on the 1st day of January, 1911.

Said complainants admit that the Fourth Class referred to in each of said actions in the same organization; that the Supreme Lodge Knights of Pythias, defendant in each of said actions, is the same corporation; and that said expense fund referred to in each of said suits is the same expense fund; and that the issues both of law and fact, raised by the pleadings in said respective suits, with reference to the use and disposition of said expense fund, are the same in both cases, but only so far as relates to such use and disposition of said expense fund, but complainants aver that the action hereinbefore referred to, which has been instituted by them against said Supreme Lodge Knights of Pythias, involves additional questions of law and fact different from those involved in said action instituted by said

297 Fritz Heimsoth as hereinbefore admitted, in that said complainants' action contests the right of said Supreme Lodge

244

Knights of Pythias to re-rate the members of said Fourth Class of the Insurance Department according to a system adopted by said Supreme Lodge Knights of Pythias, which issue of law and fact were in no wise involved in the action hereinbefore referred to, instituted by said Fritz Heimsoth against said Supreme Lodge.

Wherefore, said complainants, having well and truly answered all matters contained in said cross bill of complaint material or necessary for these complainants to make answer to, humbly pray to be hence dismissed, so far as pertains to the matters set forth in said cross bill of complaint, with their reasonable costs and charges in this behalf expended. (Signed) Miller and Dowling, Solicitors for Complainants. (Signed) Lazarus, Michel & Lazarus, Of Counsel.

245

And afterwards, to-wit: at the November Term of said court, on the 25th day of April, 1913, before the Honorable Albert B. Ander-



son, judge of said court, the following further proceedings in the above entitled cause were had, to-wit:

Come now the parties, by counsel, and file their stipulation herein, in the words and figures following, to-wit:

246

**STIPULATION.**

It is hereby stipulated by the parties to this cause that the facts and averments contained in the cross bill of complaint heretofore, of the 14th day of April, 1913, filed by the defendant in this cause shall for the purposes of this case also be treated as having been set up and averred in a supplemental answer in said cause, and that the rights of said parties shall be determined as if all of said facts had been set up and pleaded in a supplemental answer with prayer  
 298 for appropriate relief. (Signed) Miller & Dowling, Solicitors for Complainants. (Signed) J. P. Goodrick, (Signed) Miller, Shirley, Miller & Thompson, Solicitors for defendant.

247

And afterwards, to-wit: at the November Term of said Court, on the 5th day of May, 1913, before the Honorable Albert B. Anderson, judge of said court, the following further proceedings in the above entitled cause were had, to-wit:

**GENERAL CONTINUANCE.**

Ordered by the Court that all complaints and proceedings depending in said court and not specially continued be, and the same are hereby continued until the next term of this court.

And afterwards, to-wit: at the May Term of said court, on the 24th day of May, 1913, before the Honorable Albert B. Anderson, judge of said court, the following further proceedings in the above entitled cause were had, to-wit:

Comes now Edward Daniels, Esq., Master in Chancery, and files his report and evidence herein, which report is in the words and figures following, to-wit:

In the District Court of the United States for the District of Indiana.

No. 11128.

JOSEPH HOLT et al., Complainants,

v.

SUPREME LODGE, KNIGHTS OF PYTHIAS, Defendant.

### MASTER'S REPORT.

To the Honorable Albert B. Anderson, Judge of said District Court.

The undersigned Master in Chancery, to whom said suit was referred with direction to take the testimony and report the same together with his findings of fact and conclusions of law thereon, respectfully reports as follows:

299 At the times and places designated in notices to the respective parties for the taking of testimony he was present and was attended by the respective solicitors of the complainants and the defendant; that witnesses were produced before said Master by both the complainants and defendant, and gave their testimony; that the testimony of the witnesses so produced was taken down in shorthand by Mr. Rowland Evans, the official stenographer of said Court, and the same was by said stenographer written out in long-hand and is contained in one volume of evidence, which is identified by the signature of said Master in Chancery, and is returned herewith together with all the exhibits referred to by said witness, including certain detached exhibits which it was stipulated by the parties should not be copied at length in the record, but should be re-

249

turned by the Master with his report unto Court, and that said exhibits and each of them should have the same force and effect as evidence as though they had been copied at length into the record.

Upon the pleadings and testimony the said Master makes and states the following:

#### *Findings of Fact.*

##### I.

That each of the complainants named in their bill of complaint was at the time said bill was filed and is now a citizen and resident of the State of Louisiana; that the defendant, Supreme Lodge Knights of Pythias, is a corporation which was originally organized under an Act of Congress approved May 5th, 1870, authorizing the incorporation in the District of Columbia of benevolent, educational and other corporations, entitled: "An Act to provide for the creation of corpora-

tions in the District of Columbia by general law: "That the charter of said original corporation expired in 1890 by limitation, but that the same continued to do business as a de facto corporation until 1894 when this defendant was incorporated under an Act of Congress approved June 29th of that year, as the successor of said original corporation, and took over the administration of all its affairs by and with the acquiescence and consent of all its members, and has ever since continued to act as the successor of said original corporation with the full knowledge, acquiescence and consent of said entire membership including complainants.

## II.

That among the provisions of the Act of Congress by which said defendant was incorporated were the following designated as sections 2 to 6, both inclusive, to-wit:

"Sec. 2. That the said corporation shall have the power to take and hold real and personal estate, (not exceeding in value one hun-

## 250

dred thousand dollars) which shall not be divided among the members of the corporation, but shall descend to their successors, for the promotion of the fraternal and benevolent purposes of said corporation.

Sec. 3. That all claims, accounts, debts, things in action, or other matters of business of whatever nature now existing for or against the present Supreme Lodge Knights of Pythias, mentioned in Section 1 of this Act, shall survive and succeed to and against the body corporate and politic hereby created; provided, that nothing contained herein shall be construed to extend the operation of any law which provides for the extinguishing of claims or contracts by limitations of time.

Sec. 4. That said corporation shall have a constitution and shall have power to amend the same at pleasure; provided, that such constitution or amendments thereof do not conflict with the laws of the United States or of any State.

Sec. 5. That said corporation shall not engage in any business for gain; the purposes of said corporation being fraternal and benevolent.

Sec. 6. That Congress may at any time, amend, alter or repeal this act."

301 That said Section 2 above set out was amended by an Act of Congress approved February 26th, 1907, by striking out the words "not exceeding in value one hundred thousand dollars."

That said Act of June 24th, 1894, was amended by act of Congress approved June 7th, 1900, by adding thereto the words: "Said Corporation may provide for the meetings of its legislative or governing body wherever such association shall have subordinate bodies, and all business transacted at such meetings shall be valid in all respects as if such meetings were held within said District; and all business heretofore transacted at any meetings held outside of the

District of Columbia shall be valid in all respects to the same extent as if such meetings had been held within said District."

### III.

That said original corporation was during its entire existence and said defendant is and has been since its incorporation a fraternal beneficiary society; that neither the defendant nor its said predecessor was organized or was ever conducted for profit; that each of said corporations during the entire period of their existence respectively possessed a lodge system and a ritualistic form of work and had a representative form of government; the members of said two corporate bodies were designated as brothers or Knights and the affairs of said two corporations were conducted at stated meetings of the members designated as Supreme Lodge, Grand Lodges and Sections of Endowment Rank; that said predecessor of said defendant established in the year 1877 a system of insurance for the protection of its members and their beneficiaries who desired to take advantage of the protection so provided, which was known as the "Endowment Rank" and which was conducted as such Endowment Rank by said original corporation and said defendant successively until 1906 when it became known as and has since continued to be operated under the name of "Insurance Department of the Supreme Lodge Knights of Pythias."

302 The total membership of the Supreme Lodge Knights of

Pythias at the commencement of this suit was approximately 700,000 distributed throughout 7,000 lodges of which membership approximately 71,000 constituted the Insurance Department. That membership in the Endowment Rank or Insurance Department has never been a pre-requisite for membership in the local Lodges, Grand Lodges, Supreme Lodge or the Board of Control of the Insurance Department.

That the benefits of said system of insurance so established and conducted by said respective corporations successively have always been and now are confined to members of the Order; that membership in said Endowment Rank (now Insurance Depart.) is and always has been restricted to members of said Order who had attained the rank of Knight and were in good standing in a subordinate

lodge, but that no member of said Order was compelled to join said Endowment Rank (now Insurance Department); that the sole purpose of establishing and maintaining said Endowment Rank (now Insurance Department) was to provide indemnity for the beneficiaries of its deceased members; that neither of said corporations has ever at any time had any capital stock.

That by Article XIII of the Constitution of the Supreme Lodge Knights of Pythias, it was provided that:

"The Insurance Department known as the Endowment Rank established for the purpose of providing indemnity for the beneficiaries of deceased members of the Order, is a fraternal beneficiary society, and shall be governed by such laws as the Supreme Lodge may enact or authorize; provided, that the attainment of membership in such Insurance Department shall be restricted to members of the Order who have attained the rank of Knight and are in good standing in a subordinate Lodge, but shall not be compulsory upon any member of the Order."

That by the provisions of Section 1, of Chapter 2, of the Code of Supreme Lodge Knights of Pythias, adopted in 1906, and duly promulgated the following was made a law:

303 "For the purpose of effecting the orderly conduct of the business of the Insurance Department of this society there is hereby created a Board of Trustees to be known as the Board of Control which Board shall have full charge and complete control of the business and affairs of the Insurance Department subject at all times and in all things to the direction of and to account and report to the Supreme Lodge Knights of Pythias."

That by Section 37 of the Act of Congress in force since May 5, 1870, under which defendant was organized, it is provided:

"And be it further enacted that the Congress of the United States

253

may at any time alter, amend, or repeal this act, saving and reserving all rights which may become vested under the same and may amend or repeal any incorporation formed or created under this act; but any such amendment or repeal shall not, nor shall the dissolution of any company formed under this act, take away or impair any remedy given against any such corporation, its stockholders or officers for any liability which shall have been previously incurred."

That in the certificate of association of said defendant's predecessor, recorded April 5th, 1870, it was provided among other things, that:

"And be it further known that the said Supreme Lodge shall have the power to alter and amend its constitution and by-laws at will."

That an amended certificate of incorporation was executed and recorded March 7th, 1882, wherein it is provided:

"That the said Supreme Lodge shall have power to establish the Uniform Rank and the Endowment Rank upon such terms and conditions, and be governed by such rules and regulations as to the said Supreme Lodge may seem proper."

That by the special act of Congress under which the defendant was incorporated it was provided:

"Sec. 4. That said corporation shall have a constitution and shall have power to amend the same at pleasure; provided, that such constitution or amendments thereof do not conflict with the laws of the United States or of any State."

That in 1874 said defendant's predecessor adopted a constitution wherein it was provided among other things that:

"No alteration or amendment to the constitution of the Supreme Lodge shall be made unless presented at a regular session and adopted by a two-thirds vote at the next succeeding regular session; provided, that no change shall be made in the written or unwritten

## 254

work unless the same lay over from one session to another nor then unless four fifths of the representatives concur therein."

That a new constitution was adopted by said defendant's predecessor in 1880 in which the provision of the constitution of 1874, above quoted, was incorporated without change as Article 33.

That thereafter in 1894 said defendant adopted a new constitution which became effective September 1st, 1894, and is still in force, wherein it was provided among other things:

"Article 16—Amendment, Sec. 1. Any amendment of this constitution may be proposed in the Supreme Lodge at a regular convention thereof in such manner as the Supreme Lodge may by law provide; and if such proposed amendment shall be agreed to by a majority of all the members of the Supreme Lodge, it shall be entered on the journal with the ayes and nays thereon, and the further consideration thereof deferred until the next regular convention of the Supreme Lodge. Such amendment shall be published at once and forwarded to each Grand Chancellor, who shall cause the same to be reported to the next convention of his Grand Lodge, and if at the next regular convention of the Supreme Lodge such proposed amendment in form and language as agreed to at the preceding regular convention shall be adopted by the affirmative vote of a majority of all the Grand Lodges, then such amendment shall become a part of this constitution, provided that such vote shall be taken by ayes and nays and that each Grand Lodge shall be entitled to one vote of which each Supreme Representative thereof shall be entitled to cast his proportionate part."

305 That Section 2 of said constitution of 1894, which continued in force until 1906 was as follows:

"The insurance branch of the order shall be governed by such laws as the Supreme Lodge may enact or authorize; provided that

## 255

the attainment of membership in such insurance branch shall be restricted to members of the order who have attained the rank of Knight and are in good standing in a subordinate lodge, but shall not be compulsory upon any member of the order."

That in 1906 the foregoing provision of the constitution was revised to read as follows:

"The Insurance Department, known as the Endowment Rank, shall be for the purpose of providing indemnity for the beneficiaries of deceased members of the order as a fraternal, beneficiary society, and shall be governed by such laws as the Supreme Lodge may enact or authorize; provided, that the attainment of membership in such insurance department shall be restricted to members of the order who have attained the rank of Knight and are in good standing in a subordinate lodge, but shall not be compulsory upon any member of the order."

That said provision last above quoted is still in force.

#### IV.

That the jurisdiction of said respective corporations has always been during their respective lives co-extensive with the territorial limits of the United States; that the Supreme Lodge, which has always been the supreme governing body of said respective corporations in succession, has established throughout the United States grand lodges in the several states and territories, which are and always have been organized and maintained under the authority of said Supreme Lodge; that said several grand lodges have organized subordinate lodges, which are responsible to said grand lodges.

That by the general laws governing the Endowment Rank of the Defendant's predecessor, adopted in 1880, it was provided among other things by Section 1 of Article 1, that the Supreme Lodge

306

256

"possesses the power, in accordance with the laws of the order, to establish the Endowment Rank," and by Section 7 of Article 1, "to create, hold and disburse the funds named in the objects of the rank under such regulations as it may be deemed necessary to adopt."

And it was further provided by Section 4 of Article 6 that "these laws may be altered or amended at any regular session of the Supreme Lodge Knights of Pythias."

That said provisions above set forth were re-enacted in the general laws for the government of the Endowment Rank in 1884, except that Section 4 of Article 6 was amended to read as follows: "These laws may be altered or amended at any regular session of the Supreme Lodge Knights of Pythias by a two-thirds vote."

That said laws continued in force until 1886 when they were re-enacted, and said re-enacted provisions continued in force until 1888 when they were again re-enacted; that the provisions of the laws of 1888 continued in force until 1890, when they were again re-enacted, except the provision with reference to amendment, which was amended to read as follows: "The provisions of these general laws may be altered or amended at any regular session of the Board of Control of the Endowment Rank Knights of Pythias of the World."



That in 1892 it was provided by the general laws for the government of the endowment Rank by Article 1 of Section 1, that the Supreme Lodge Knights of Pythias, "possesses the power in accordance with the laws of the Order, to establish the Endowment Rank and create a Board of Control for the governing thereof as herein-after provided," and by Section 1 of Article 5: "these laws may be altered or amended at any regular session of the Supreme Lodge Knights of Pythias of the World by a two-thirds vote."

## 257

That said laws of 1892 were again re-enacted in 1894 and 1896, except that the provisions with reference to amendment was amended to read as follows: "These laws may be altered or amended  
307 at any regular convention of the Supreme Lodge Knights of Pythias in accordance with the provisions of the Supreme constitution and Supreme statutes."

That the laws of 1898, 1900 and 1901, are a re-enactment of those of 1896.

That by the laws of the defendant governing the Insurance Department enacted in 1906, it is provided:

"The laws of the order as herein enacted, with any and all amendments thereto hereafter enacted by the Supreme Lodge, and all rules and regulations of the Board of Control as the same exist, or may from time to time be adopted, shall be and constitute a part of the contract of insurance between the member of the Insurance Department and such department and shall be binding upon such members."

That by Section 5 of Article 5 of the constitution for Sections of the Endowment Rank adopted April 30th, 1884, it is provided that:

"The Endowment Fund for the payment of benefits in the Fourth Class shall be derived from monthly payments by each member, said payments to be for each one thousand dollars of endowment and to be graded according to the age of the member at the time of making application, except as provided in Section 3 of this Article and his expectancy of life, the age to be taken at the nearest anniversary of his birthday. So much of such monthly payments as shall equal the actual cost of the endowment shall constitute the Endowment Fund and the residue of such monthly payments shall be placed in a reserve fund. Said monthly payments shall be based upon the average expectancy of life of the applicant and shall continue the same so long as his membership continues. The said monthly payment for endowment and reserve shall be according to the following table."

## 258

(Here follows the Table of Rates.)

That by section 6 of said article it was provided:

308 "Until one monthly payment by members holding an equal amount of endowment, less the amount placed in reserve, shall be sufficient to pay the amount of endowment held by a brother, the benefit to be paid in case of death shall be a sum equal to one payment by each member holding an equal amount of endowment, less the amount to be placed in reserve."

That said provisions as set out continued in force until 1886 when section 5 supra, was amended to read as follows:

"Each member of the Endowment Rank shall, on presenting himself for obligation, pay to the Secretary of the Section, in accordance with his age and the amount of Endowment applied for, a monthly assessment, as provided in the following table, and shall continue to pay the same amount thereafter as long as he remains a member of the Endowment Rank."

(Here follows the Table of Rates.)

That Section 6 was at said time amended to read as follows:

"Whenever one monthly assessment by members holding an equal amount of endowment shall not be sufficient to pay the amount of Endowment held by a member, the benefit to be paid in case of death shall be a sum equal to one assessment by each member holding an equal amount of endowment."

That in 1888 said sections of the constitution of the Endowment Rank were amended to read as follows:

Each member of the Endowment Rank, shall on presenting himself for obligation, pay to the Secretary of the Section, in accordance with his age and the amount of endowment applied for a monthly assessment, as provided in the following table, and shall continue to pay the same amount each month thereafter as long as he remains a member of the Endowment Rank; unless otherwise provided for by the Supreme Lodge Knights of Pythias of the World."

(Here follows the Table of Rates.)

209 "If at the time of the death of a member of the Endowment Rank, the proceeds of one Assessment upon all members of said Rank shall not be sufficient to pay in full the maximum amount of endowment held under the certificate of said deceased member, then there shall be paid to the beneficiary an amount equal to the proceeds of one full assessment made upon all the remaining members of said Endowment Rank, less ten per cent for expenses, and the payment of such sum to the beneficiary, shall be in full of all claims, and demands under and by virtue of said certificate."

That no changes were made in the provisions of said sections as re-enacted in 1888 until 1894 when the section with reference to the payment of monthly rates was amended to read as follows:

"Section 1. Each applicant for membership in the Endowment Rank shall, upon completion of his application for transmission to the Board of Control, pay to the Secretary of the Section, in accordance with his age and the amount of endowment applied for, a monthly payment as provided in the following table, and, if

accepted, such member shall continue to pay the same amount each month thereafter as long as he remains a member of the Endowment Rank, unless otherwise provided for by the Supreme Lodge or Board of Control of the Endowment Rank, Knights of Pythias of the World."

(Here follows Table of Rates.)

That in 1894 the provision with reference to the payment of the proceeds of one assessment in lieu of the face of the certificate was not re-enacted and was repealed; that said provision last above set forth continued in force until 1901 when a new table of rates was adopted for all members of the Endowment Rank, and the following provision was enacted:

260

"Section 4. Each applicant for membership in the Endowment Rank shall, upon completion of his application for transmission to the Board of Control, pay to the Secretary of the Section, in accordance with his age, occupation and the amount of endowment applied for, a monthly payment as provided herein, and as provided in Section 5 of this Article; and if accepted, such member shall continue to pay the same amount each month thereafter as long as he remains a member of the Endowment Rank, except as  
310 provided in Section 6 of this Article, or unless otherwise provided for by enactments of the Supreme Lodge or Board of Control of the Endowment Rank Knights of Pythias; and every person who is at present a member of the Endowment Rank shall pay each month hereafter, as long as he remains a member of the Endowment Rank monthly payments as fixed by the table herein in accordance with the age at which he has been immediately heretofore rated and in accordance with his occupation as provided in Section 5 of this Article as long as he shall remain a member of the Endowment Rank, except as provided by enactment of the Supreme Lodge, or Board of Control of the Endowment Rank Knights of Pythias."

The section last above set out continued in force until 1906 when it was provided that each member of the Fourth Class should continue thereafter to pay monthly payments as set out in said constitution "unless otherwise provided for by enactments of the Supreme Lodge or Board" and that each member of the Fifth Class should pay the rates set out in said constitution "So long as the monthly rates shown in the following table shall remain in force, except as stated in these statutes and unless otherwise provided for by enactments of the Supreme Lodge or Board."

That said provisions last above set out have remained continuously in force and have never been amended, revoked, annulled or superseded.

That at the Special Session of the Supreme Lodge Knights of Pythias, held in 1901, the following Resolution was adopted by that body, namely:

Be it resolved by the Supreme Lodge, Knights of Pythias, That said Supreme Lodge recognizes not only its legal but its moral and fraternal responsibility to stand behind and protect every beneficial

261

certificate issued by and in force in the Endowment Rank Knights of Pythias, and we hereby pledge to every holder of said certificate all such legislation as may be needed to fully protect the holders of said certificates and such as will produce full and prompt payment of all claims due thereon."

311

V.

That under said Lodge system there was established in the State of Louisiana prior to 1879 a grand lodge and under the jurisdiction of said grand lodge certain subordinate lodges; that the complainants have been and are members in good standing of the Order of Knights of Pythias in certain of said subordinate lodges of said order in said State of La. and each of them became members of said Endowment Rank upon the respective dates in the manner and of the classes respectively as hereafter set forth.

VI.

That in the operation of said Endowment Rank (now Insurance Department) there were formed from time to time by said Supreme Lodge Knights of Pythias different classes of membership known respectively as the First, Second, Third, Fourth and Fifth Classes; that the First Class commenced operations in 1877, the Second Class in 1877; the Third Class in 1880; the Fourth Class in 1884, and the Fifth Class in January 1st, 1907; that every benefit certificate ever issued to any member of the Endowment Rank (now Insurance Department) specified the particular class in which said certificate was issued and to which said member belonged.

Section 6 of Chapter 6 of the Code of By-Laws of the Supreme Lodge Knights of Pythias, provided as follows:

"In the operations of the Insurance Department the membership of each Class shall be kept separated on the records from the membership of every other Class. The books and records of the Board shall show at all times the individual and total membership of each Class, and, to that extent, each class shall be treated as a separate and distinct Society."

262

On April 30th, 1884, the Supreme Lodge Knights of Pythias adopted, with others, Sections 4 and 5 of Article V of the General Laws and Constitution for the Government of sections of the Endowment Rank Knights of Pythias; said Section 4 pertains to the duties of the Supreme Secretary and said Section 5 pertains to the duties of the Supreme Master of the Exchequer. In said Section 4 it was among other things provided as follows:

312

"He (The Supreme Secretary) shall also keep an account with the Supreme Master of Exchequer in each class of the Endowment and the expense funds, charging him with all moneys paid to him and crediting him with all orders drawn upon him, specifying in each other the fund against which it is drawn. He shall report at least semi-monthly to the Supreme Master of Exchequer and transmit therewith all moneys in his hands stating clearly what part belongs to each class of the endowment or expense funds of the rank. \* \* \* He shall have charge of two funds—an endowment fund, made up of the sum of one dollar from each and every member of the rank upon his admission and one dollar from each member at each subsequent assessment; and an expense fund made up of the receipts from the sale of supplies, of the sum of one dollar for each admission fee when one class only is applied for, but of fifty cents for each class when the first and second classes are applied for, and of the further sum of ten cents from each subsequent assessment. \* \* \* He shall receive such compensation, payable out of the expense fund of the Endowment Rank, as the Supreme Lodge may, from time to time, determine."

Said Section 5 among other things provides as follows:

"He (the Supreme Master of Exchequer) shall keep a cash account for each Class of the Endowment and expense funds of the rank. \* \* \* For his services to the Endowment Rank, he shall receive such compensation, payable out of the expense fund of said rank, as the Supreme Lodge may, from time to time, determine."

## 263

For the First, Second and Third Classes one expense fund was maintained. When the Supreme Secretary made his semi-monthly reports to the Supreme Master of the Exchequer, he made such reports show the division of the expense fund in amount, to the credit of each class.

Up to March 31st, 1894, the Endowment funds of the First, Second and Third Classes were always kept separate; on the last named date, the endowment funds of said three Classes then 313 on hand in cash, namely, \$86.00 were merged in the general fund of the association; at that time the total membership of the said three Classes was about one hundred.

Article 5 of the Constitution for Sections of the Endowment Rank, adopted in 1884, pertains to the establishment and maintenance of the Fourth Class of the Endowment Rank.

Section 5 of the last mentioned Article 5, reads in part as follows:

"The Endowment Fund for the payment of benefits in the Fourth Class shall be derived from monthly payments by each member, said payments to be for each one thousand dollars of endowment, and to be graded according to the age of the member. \* \* \* So much of such monthly payments as shall equal the actual cost of the en-

dowment shall constitute the Endowment Fund, and the residue of such monthly payments shall be placed in the Reserve Fund."

Section 7 of the last mentioned Article 5 reads as follows:

"The Reserve Fund consisting of the membership fees and the parts of monthly payments as provided by Section 5 of this article shall be in keeping of the Supreme Master of the Exchequer, and so much thereof as may not be needed for the payment of the expenses of this class shall be invested by him under the superintendence of the Board of Control."

Section 8 of the said last mentioned Article 5 reads as follows:

264

"The expense of conducting the business of the Fourth Class shall be paid out of the Reserve Fund."

Section 10 of the last mentioned Article 5 reads as follows:

"All laws, forms and business details of the Endowment Rank heretofore made or hereafter enacted shall apply with full force to the Fourth Class and the members thereof so far as applicable thereto, and so far as they are not changed by the provisions of this article."

Conformably with the charter and the provisions of the Constitution as herein set out, the order subsequently adopted legislation as hereinafter stated, making changes with respect to the so-called Expense Fund.

314 The words Reserve Fund were applicable to the Fourth Class which at the time of its establishment and for about three years thereafter had no fund which was called or known as the Expense Fund. The cost of starting and maintaining the Fourth Class was paid during the first year out of the then Expense Fund, and within a month or so after the expiration of such first year the amount was returned to the expense Fund out of the Reserve Fund of the Fourth Class, and the same course was followed during the second year of the Fourth Class. During the third year the cost of maintaining the Fourth Class was paid from time to time out of moneys contributed by members of the Fourth Class only.

## VII.

That the basis upon which said insurance system was primarily organized and maintained was what is known as the assessment plan, under which assessments were levied upon the members of said respective classes to pay the benefits accruing under the certificates of membership held by the deceased members of said respective classes.

265

That the said assessment plan of insurance so originally established and maintained was discontinued in 1884, except as to the

right to levy special assessments, which was reserved, and in that year a monthly payment plan of insurance was substituted therefor by proper legislation of said Supreme Lodge; this change from the assessment plan to the monthly plan was, in effect, brought about by the creation in 1884 of the Fourth Class of the Endowment Rank and the transfer to it in time of most of the memberships of the First, Second and Third Classes; there are now no members of the Third Class, but there are now in all eight members of the First Class and the Second Class. The rate of payments under said monthly payment plan was graduated according to the age of said respective members at the time of application for membership; this rate of payment was thereafter shown by experience to be inadequate

to provide a sufficient fund for the payment of the death benefits. 315      The members of said Endowment Rank agreed to be paid on the respective beneficial certificates or policies of insurance, held by the members of said Endowment Rank; these policies of insurance, however, issued prior to 1892, contained a stipulation substantially to the effect that until one monthly payment by members holding an equal amount of endowment less the amount placed in the reserve should be sufficient to pay the amount of endowment held by a brother, the benefit to be paid in case of death should be a sum equal to one payment by each member holding an equal amount of endowment, less the amount to be placed in the reserve.

That the monthly installment plan so inaugurated in 1884, continued in force until 1901 at which time there was a deficit in the Mortuary Fund of the Fourth Class, which then constituted practically the entire Insurance Department of said defendant corporation, amounting to \$34,959.06, while on the same day there were outstanding and unpaid death losses amounting to \$248,500 in said Fourth Class; said 1884 rate thus proved inadequate to meet the mortuary claims accruing against said Fourth Class Mortuary Fund

## 266

and much less to provide a reserve fund sufficient to insure the payment of mortuary claims maturing in the future.

## VIII.

That in order to maintain said Fourth Class Mortuary Fund it became and was necessary in said year 1901 to further increase said rates of Assessments and thereupon in said last mentioned year said defendant, Supreme Lodge Knights of Pythias, at its biennial convention revised the rates to be paid by members of said Fourth Class then constituted practically said Endowment Rank (now Insurance Department) and put in force what is known as the National Fraternal Congress Table of Rates, except that the members of said Fourth Class and of said Endowment Rank (now Insurance Department) were re-rated under said table of rates at their ages and 316      the date of their entry and not at their attained ages and except further that of the amount collected under said table of rates fifteen per cent was set apart and used for expenses, whereas



said National Fraternal Congress Table of Rates did not contemplate that any sum should be deducted therefrom for expenses, but that there should be added thereto a sum sufficient to meet all the expenses of said Endowment Rank (now Insurance Department) except mortuary claims; that said rates so adopted and put in force in 1901 were also inadequate and insufficient to meet death losses as they occurred and provide a proper reserve for the payment of the policies of insurance in said Fourth Class as they matured, and that by reason of said deduction of fifteen per cent, and by reason of the members of said Fourth Class being re-rated at their age upon entry and not at their attained age when said re-rating took place, said rates were rendered still more inadequate and insufficient for said purposes, and that the permanent maintenance of said 1901 rates

267

would have resulted in a few years in a deficit in said Fourth Class mortuary fund rendering said Endowment Rank (now Insurance Department) unable to meet its current obligations without resorting to the expedient of frequent special assessments.

That the levying and collection of special assessments with sufficient frequency to maintain said Fourth Class mortuary fund under said 1901 rates was not practicable for the reason that as shown by mutual life insurance experience, such a policy would have resulted in depleting the membership of said Fourth Class so as to ultimately disintegrate and destroy the same.

## IX.

That all beneficial certificates or policies of insurance issued by said defendant and its said predecessor subsequent to 1892 provided for the payment of a fixed amount to each beneficiary without any reservation of the right in the insurer to pay any lesser sum for any reason whatever.

A majority of the complainants before becoming members of the Fourth Class had been members of earlier classes. All of the complainants became members of the Fourth Class and received beneficial certificates.

At the time more than one half of the complainants became members of the Fourth Class the Constitution of 1884 was in force. It contained the following provisions:

"Constitution of 1884: The Endowment Fund for the payment of benefits in the Fourth Class shall be derived from monthly payments by each member, said payments to be for each one thousand dollars of endowment and to be graded according to the age of the member at the time of making application, except as provided in Section 3 of this Article, and his expectancy of life, the age being

268

taken at the nearest anniversary of his birthday. So much of such monthly payments as shall equal the actual cost of the endowment

shall constitute the Endowment Fund, and the residue of such monthly payments shall be placed in a reserve fund. Said monthly payments shall be based upon the average expectancy of life of the applicant, and shall continue the same so long as his membership continues. The said monthly payment for endowment and reserve shall be according to the following table."

The table mentioned is as follows:

Age of entry.	For endowment fund.	For reserve fund.	Total monthly payment.
21.....	\$ .40	\$ .30	\$ .70
22.....	.40	.30	.70
23.....	.40	.30	.70
24.....	.40	.35	.70
25.....	.40	.35	.75
26.....	.40	.40	.75
27.....	.40	.40	.80
28.....	.40	.40	.80
29.....	.40	.40	.80
30.....	.40	.40	.80
31.....	.45	.40	.85
32.....	.45	.45	.90
33.....	.45	.45	.90
34.....	.45	.50	.95
35.....	.45	.50	.95
36.....	.45	.55	1.00
37.....	.45	.55	1.00
38.....	.50	.55	1.05
39.....	.50	.60	1.10
40.....	.50	.60	1.10
318 41.....	.50	.65	1.15
42.....	.50	.70	1.20
43.....	.55	.70	1.25
44.....	.55	.75	1.30
45.....	.60	.75	1.35
46.....	.60	.80	1.40
47.....	.60	.85	1.45
48.....	.65	.85	1.50
49.....	.70	.85	1.55
50.....	.70	.90	1.60
51.....	.75	.90	1.60
52.....	.80	.95	1.75
53.....	.85	.95	1.80
54.....	.90	1.00	1.90
55.....	.95	1.05	2.00
56.....	1.00	1.10	2.10
57.....	1.10	1.10	2.20
58.....	1.15	1.15	2.30
59.....	1.25	1.15	2.40
60.....	1.35	1.20	2.55

When the other complainants became members of the Fourth Class the constitution of 1886 was in force. It contained the following provision.

"Constitution of 1886. Each member of the Endowment Rank shall, on presenting himself for obligation, pay to the Secretary of the Section, in accordance with his age and the amount of endowment applied for, a monthly assessment, as provided in the following table, and shall continue to pay the same amount each month thereafter so long as he remains a member of the Endowment Rank."

Subjoined was a table substantially the same as the one last above set out.

Sixteen of the complainants hereinafter named, in joining the Fourth Class, received certificates therein reading as follows:

"This is to certify that — received the Endowment Rank of the Order of Knights of Pythias \* \* \* and is a member in good standing in said Rank, and in consideration of the representations and declarations made in his application dated — — —, which application is made a part of this contract, and the payment of the prescribed admission fee, and in consideration of the payment hereafter to said Endowment Rank of all monthly payments as required, and the full compliance with all the laws governing this Rank, now in force or that may hereafter be enacted, and shall be in good standing under said laws, the sum of — will be paid by the Supreme Lodge Knights of Pythias of the World to — as directed by said Brother in his application, or to such other person or persons as he may subsequently direct," as hereinafter is stated.

On March 14th, 1886, defendant issued and circulated a letter reading in part as follows: "The officers of the Supreme Lodge of

the Knights of Pythias of the World desire that the merits of the Endowment Rank be fully understood and appreciated by the members of the order so as to extend its benefits and increase the membership; therefore, your careful attention is called to this circular—The monthly assessments of the members are fixed,—and remain the same during the member's connection with the Endowment Rank, being determined by the age of the applicant at the time the application is made, and the amount of Endowment applied for,—The Endowment Rank of the Knights of Pythias of the World is hereby recommended to you, one and all, as safe, sound and worthy of your utmost confidence."

"Prior to 1892, all Fourth Class certificates contained a provision that the amounts payable thereunder were limited to one assessment on the Fourth Class, less 10% for expenses. After 1892, the policies called for the payment of the face of the policy, without limitation.

## X.

That in the summer of 1906 the officers of said defendant Supreme Lodge Knights of Pythias, including the members of the Board of Control, whose duty it was to administer the affairs of said Insurance Department, recognized the inadequacy of the rates then in force to maintain the mortuary fund of said Fourth Class and

for the purpose of devising and installing a plan which would  
 320 permanently establish said Insurance Department on a solvent basis and provide a sufficient mortuary fund to meet not only current obligations against the same but enable said Department to accumulate a sufficient reserve to protect all future maturing mortuary obligations and protect all members against loss employed and consulted experienced and competent actuaries to formulate and suggest to said defendant and its said officers a plan which would enable it to meet the obligations it had assumed toward the membership of said Endowment Rank (now Insurance Department) and place the same upon a basis which would enable it to

271

carry out its existing contracts and maintain its said system of mutual beneficiary insurance.

That said actuaries so employed and consulted investigated the condition of said defendant's Insurance Department (then known as the Endowment Rank) and recommended to defendant as the best means of preserving said insurance system on a safe, solvent and permanent basis and preventing the dismemberment of its said Endowment Rank (now Insurance Department) the establishment of a new class to be known as the Fifth Class of said Endowment Rank (now Insurance Department) the rate of insurance in which class would be based upon rates exacted by what are known as "old line life insurance companies", except as to the expense loading which was the voluntary transfer from said existing Endowment Rank (now Insurance Department) to said Fifth Class and with further provision for the establishment and maintenance of an adequate rate of insurance for those who chose to continue as members of said Fourth Class.

The rates for the Fourth Class in force in the summer of 1906 were, unless the Board of Control exercised the power of special assessment, vested at all times since the creation of the Board of Control in said Board by the Constitution and by Laws, inadequate to maintain the mortuary fund of the Fourth Class and accumulate a sufficient reserve to protect all future maturing obligations.

321

## XI.

That after considering said recommendation so made by said actuaries so employed said defendant, Supreme Lodge Knights of Pythias did by appropriate legislation cause to be established a Fifth Class of its said Endowment Rank thereafter to be known as the

Insurance Department of said Supreme Lodge Knights of Pythias, and caused to be established for said Fifth Class what is known as a level or flat rate of insurance, which was based upon the American Experience Table of mortality, and the rates so fixed were adequate to meet all currently accruing death claims and to provide a sufficient reserve for the maturing of every benefit certificate in said Fifth Class.

272

## XII.

That said 1901 rate of insurance was continued in operation as to said Fourth Class until January 1, 1911, at which time there became effective a rate previously established by said defendant, which rate was based upon the American Experience Tables of Mortality, except as to expense loading which was less than that charged by old line insurance companies, and applied to the members of said Fourth Class according to their then attained ages, and which last mentioned rate still continues in force as to said Fourth Class.

## XIII.

That upon the establishment of said Fifth Class in 1906 (effective in 1907) said defendant Supreme Lodge Knights of Pythias, through its Insurance Department, promulgated, under legislation of said Supreme Lodge authorizing the same, a plan or system of transfers, whereby members of said Fourth Class were enabled at their option to transfer their membership to said Fifth Class without medical examination upon payment of the regular rate of insurance adopted for said Fifth Class at their then attained ages, which plan or system of transferring also permits transfers from said Fifth Class to said Fourth Class upon life terms and conditions, and which plan or system of transfer has continued in force until the present  
 322 time, except from April 1, 1909, to August 1, 1910, during which time members transferring were required to pass medical examinations.

That said defendant, Insurance Department, caused circular letters to be forwarded to all members of said Insurance Department, and as far as practicable caused personal visits to be made to said members for the purpose of explaining the reasons for the creation of said Fifth Class, as above stated, together with said plan of transfer

273

and the advantages thereof as hereinbefore mentioned, and invited and solicited members to transfer to said Fifth Class.

That the representations so made to said members in order to secure their transfer to said Fifth Class were in substance, that said Fourth Class was rapidly approaching a condition when it would be unable to meet its maturing obligations and which ultimately would result in disintegration and dismemberment because of its inade-

quate rate of insurance, unless it could be promptly relieved of the heavy burdens then resting upon it, represented by its outstanding certificates or policies of insurance, or means be provided to greatly enhance the resources of said Fourth Class.

That for the purpose of rehabilitating and preserving said Insurance Department and preventing ultimate insolvency thereof, and protecting all certificate holders against loss, said defendant Supreme Lodge Knights of Pythias, under the advice of expert insurance actuaries devised said plan so promulgated, including the establishment of said Fifth Class and provision for transfer thereto from said Fourth Class, with adequate rates of insurance provided to take care of and protect all persons so transferring against present or future loss.

#### XIV.

That in the creation of said Fifth Class, and in the establishment and promulgation of said system of transfer said defendant  
 323 Supreme Lodge Knights of Pythias and its Insurance Department acted in entire good faith and when the whole design and purpose of protecting the entire membership of said Insurance Department in what seemed to said defendant and its said Insurance Department to be, and which said Master finds was, the only practicable known method of relieving said Insurance Department from existing financial embarrassment and probably dismemberment and

#### 274

disintegration in the near future.

That all representations and inducements so made and held out to the membership of said Insurance Department respecting said plan or system, and the advisability and advantages of transferring to said Fifth Class, and all expenditures made by said defendant in furtherance of said plan, and in carrying out the same, were made and expended in good faith by said defendant and its officers for the purpose of preventing the dissolution and dismemberment of said Insurance Department on account of its heavy existing liabilities and approaching inability to meet its Mortuary expenses, all of which expenditures were made necessary by the financially embarrassed condition of the Fourth Class, and were made for its benefit and relief that all of said representations so made were in fact true.

That it was and would have been impracticable for said defendant and its Insurance Department to have provided a sufficient fund to meet the present and future Mortuary liabilities of said Insurance Department through what is known as the Special Assessment Plan or by an arbitrary increase of existing rates applicable to all members of said Department; and that if said plan so adopted and promulgated by said defendant embodying the creation of said Fifth Class and providing for transfers, as aforesaid, had not been adopted and carried out substantially, as above, said Insurance Department, consisting at that time practically of said Fourth Class, would have been unable to permanently maintain itself so as to meet its Mortuary

obligations for more than a very few years when it would have  
 324 become necessary to levy and collect such frequent special  
 assessments as to make said insurance so burdensome as to  
 result in the dismemberment and destruction of said Insurance De-  
 partment.

## XV.

In the year 1906 the Fourth Class was composed of 81,819 mem-  
 275

bers, with outstanding insurance of \$125,455,000 and a reserve to  
 protect said insurance of \$1,189,277.53, which sum was inadequate  
 for that purpose. The membership of the Fourth Class contained  
 many men who were advanced in years, and the mortality of the  
 class was increasing. Transfers from the Fourth to the Fifth Class  
 were as follows:

1907, 20,409,	carrying	\$26,439,500	insurance.
1908, 21,422,	"	33,223,500	"
1909, 12,697,	"	20,191,500	"
1910, 877,	"	1,547,000	"
1911, 3,940,	"	6,540,500	"

The average ages of the Fourth Class transfers to the Fifth Class  
 were as follows:

1907	.....	38.09	years.
1908	.....	41.26	"
1909	.....	44.82	"
1910	.....	47.86	"
1911	.....	54.40	"

The membership of the Fourth Class was as follows:

1906	.....	81,819	members in Fourth Class.
1907	.....	55,717	" " " "
1908	.....	31,263	" " " "
1909	.....	12,919	" " " "
1910	.....	8,784	" " " "
1911	.....	2,312	" " " "

Eight hundred and sixteen members of the Fourth Class in 1911 were  
 sixty five years of age or over and nine hundred and seventy eight  
 members of that Class were over fifty and less than sixty five years  
 of age.

That during the years 1907, 1908, 1909 and 1910, 55,425 of the  
 81,000 members constituting the Fourth Class of said Insurance De-  
 partment of January 1, 1907, voluntarily transferred to said  
 325 Fifth Class, and during the same period said Fourth Class  
 membership was depleted by death and lapses to such an ex-  
 tent that there remained on January 1, 1911, only 8,784 members.  
 The percentage of lapse of insurance in force in the Fourth



## 276

Class for the years 1902 to 1912, were as follows:

1902 .....	6.93	per \$1,
1903 .....	7.49	" "
1904 .....	6.54	" "
1905 .....	6.52	" "
1906 .....	6.39	" "
1907 .....	6.35	
1908 .....	5.09	
1909 .....	21.07	
1910 .....	22.80	
1911 .....	28.00	
1912 To September 30th .....	3.24	

The loss ratio per thousand dollars insurance in the Fourth Class and in the Fifth Class and respective averages for years and the transfers to the Fifth Class, the average age of transfers to the Fifth Class, are severally shown in the following tabulation, all as follows:

*Fourth Class.*

## Loss Ratio per \$1,000 Insurance.

Ages.	1906.	1907.	1908.	1909.
21-30 .....	3.65	8.28	11.88	17.3
31-40 .....	5.95	9.95	11.54	13.6
41-50 .....	9.62	11.61	17.20	19.8
51-60 .....	23.78	22.66	29.33	30.2
61-70 .....	42.88	36.30	44.55	57.5
71-80 .....	89.80	94.00	94.78	103.3
Averages for years ..	13.38	17.48	26.63	41.6

*Fifth Class.*

Ages.	1907.	1908.	1909.
21-30 .....	.72	3.05	4.8
31-40 .....	1.27	5.33	5.3
41-50 .....	2.02	7.37	10.2
51-60 .....	.98	10.20	19.1
61-70 .....	1.32	6.81	50.0
71-80 .....	.....	.....	66.4
Average for years .....	1.32	6.32	10.4

Average for year 1910, Fourth Class, 51.77.

Fifth Class, 12.16.

Average for year 1911, Fourth Class, 81.58.

Fifth Class, 17.78.

### 326 *Net Transfers to Fifth Class.*

Years.	Number.	Amount of Insurance.
1907 .....	20,409	\$26,439,500.00
1908 .....	21,442	33,223,500.00
1909 .....	12,697	20,191,500.00
1910 .....	877	1,547,000.00
1911 .....	3,940	6,540,500.00
1912 to Sept. 30th.....	4	5,500.00
	<hr/> 59,359	<hr/> 87,947,500.00

### *Average Age of Transfers to Fifth Class.*

For the year of 1907.....	38.09	years.
" " " " 1908.....	41.26	"
" " " " 1909.....	44.82	"
" " " " 1910.....	47.86	"
" " " " 1911.....	54.40	"

### *Explanatory Statement of Proceedings.*

By the heading of "Loss Ratio per \$1000 Insurance" is meant the ratio of death claims incurred to insurance exposed.

Under the heading "Fourth Class" for the year 1906 and for the ages 21 to 30, the insurance exposed between those ages was considered and this amount was divided into the death losses for these ages which amounted to \$3.65. This amount is the average rate of claims incurred per \$1000 of insurance in force or a loss of \$3.65 for each thousand of insurance in force between the ages given.

For the year 1909 and for the ages between 71 and 80 the same method was followed which shows a loss of \$103.32 for each thousand dollars of insurance exposed between those ages.

This same explanation applies to all other figures given in this exhibit.

The "Average for Years" was obtained by dividing the entire insurance in force during each year into the entire death losses for all ages during that year.

That during the year 1910 said defendant by proper legislation

caused to be promulgated through its Insurance Department to the remaining members who had not transferred to said Fifth Class the following offers or options, to-wit:

Option C.—To accept voluntarily the new rates as established by the legislation of 1910 for the Fourth Class.

Option D.—To take in lieu of the old certificates in the Fourth Class a new benefit certificate providing for insurance for either a five or ten year period, respectively using the new table of rates for said term insurance.

## XVI.

That during the year 1910 said defendant by proper legislation caused to be promulgated through its Insurance Department to the remaining members who had not transferred to said Fifth Class the following offers or options, to-wit:

Option C.—To accept voluntarily the new rates as established by the legislation of 1910 for the Fourth Class.

Option D.—To take in lieu of the old Certificates in the Fourth Class a new benefit certificate providing for insurance for either a five or ten year period, respectively, using the new table of rates as a basis for said term insurance.

Option E.—To continue paying the old rate and to receive a new certificate for such period of time as said old rates would give the remaining member protection, using the new rate as the basis for determining the cost of insurance.

Option F.—By paying the old rate and scaling the benefit certificates down to such sum as the old rate would provide insurance for during the whole period of life.

Option G.—To continue paying the old rate and have charged against their benefit certificates as a lien thereon the deficiency found to be due upon each member's contract respectively, by reason of the payment of said insufficient rates.

Option H.—That if unable to pay the full amount of each monthly payment, as provided for by the new rates, to have the privilege of making a monthly payment in cash of so much of said rate as is required for current mortality and expense purposes, allowing the balance of said monthly rate to be charged against their certificate

328

279

as a lien, which loan with 5% interest per annum should be payable at their pleasure, and if not paid during their lifetime should be deducted on their death from the face of their certificates.

That since January, 1911, by further deaths, lapses and transfers to said Fifth Class said Fourth Class membership had been reduced to 2081 members on July 1, 1912, about 200 of whom have not accepted either of said options, but have been re-rated by said defendant according to the American Experience Tables of Mortality. That all of the residue of said members have accepted one or the other of the foregoing options and have continued their membership thereunder until the present time.

## XVII.

That on the 31st day of December, 1906, the per capita interest of the members of the Fourth Class in the Mortuary Fund of said Class was \$14.53; and on said date the per capita interest of said Fourth Class members in the existing expense fund was \$4.82.

That on the 31st day of January, 1911, the per capita interest of the then members of said Fourth Class in said Mortuary Fund was

\$149.23 and \$5.60 in said expense fund; however, during the entire period of said defendant's existence, and that of its said predecessor, it was provided by the legislation of said respective orders that no member of said Endowment Rank, (now Insurance Department) had any divisible interest in either of said funds; that the increase of the per capita interest of said Fourth Class members in said Mortuary Fund and said Expense Fund was due to the establishment and operation of said Fifth Class and said system of transfers retained for the exclusive benefit of those who elected to and did remain members of said Fourth Class the entire Mortuary Fund of said Insurance Department as it existed December 31, 1906.

§29 That under the plan and system established and carried

280

out by the defendant for the creation of the Fifth Class and the Transfer of Fourth Class members thereto, those members of the Fourth Class who transferred to the Fifth Class relinquished upon transfer any interest that they had in the Mortuary Fund of the Fourth Class.

That on the 31st day of December, 1906, there was \$394,082.25 on hand in the Expense Fund of the Insurance Department; that of said \$394,082.25 constituting the Expense Fund of said Insurance Department on the 31st day of December, 1906, the members of said Fourth Class, as constituted February 1st, 1911, contributed only 4%; the remaining 96% having been contributed by members of the Fifth Class who had transferred from the Fourth Class, and by former members of the First, Second and Fourth Classes who had died or whose membership had lapsed prior to February 1st, 1911, and by the existing eight members of the said First and Second Classes.

### XVIII.

That from the organization of the Endowment Rank in 1877 down to the year ending March 31, 1886, a single Expense Fund was kept out of which was paid all the expenses of the First, Second and Third Classes of said Rank; and from and after the organization of said Fourth Class in 1884 the expenses of the First, Second, Third and Fourth Classes were paid out of said Expense Fund down to March 31, 1886; that at the end of the fiscal years 1885 and 1886, there was taken from the Fourth Class fund what was estimated to be its pro rata part of the expense of administration of the Endowment Rank, which amount was paid into the common expense fund of the Endowment Rank; that by the year 1887 the First, Second and Third Classes, respectively, had few members left therein; that from the year 1887 down to and including the year 1894, there was

281

§30 a common expense fund kept for the First, Second and Third Classes, and a separate expense fund for the Fourth Class, and the two divisions as to the expense fund were so separated until the year 1894; that from the fiscal year ending March 31, 1894, a single

fund was maintained known as the "Endowment Fund" into which was transferred all of the funds on hand belonging to the First, Second, Third and Fourth Classes and into which all the receipts of the Endowment Rank were paid and out of which all the expenses and death losses were paid down to and including the fiscal year ending December 31, 1906, and that at no time since 1894 has there been any separate expense fund maintained or in existence for any class of said Endowment Rank (now Insurance Department); but that since 1894 down to December 31st, 1906, all expenses of said Insurance Department have been paid with the full knowledge, acquiescence and consent of all the members thereof from a common fund known as the Endowment Fund to which all members contributed during said time; that subsequent to January 1, 1907, all expenses of said Insurance Department have been paid out of the common expense fund of said Insurance Department, and that prior to July 1, 1910, no protest had ever been made to the said defendant or its Insurance Department by any member of said Insurance Department to the payment of such expenses out of said common expense fund; nor any claim made by any member of said Insurance Department prior to said last mentioned date that said expense fund belonged exclusively to said Fourth Class.

## XIX.

During the time the complainants have been members of the Insurance Department they have contributed regularly the respective amounts required of them, except and until the beginning of 1911; that on January 2, 1911, they severally tendered the amount of the respective premiums theretofore collected from them under the 1901

## 282

rates to the Secretaries of the Subordinate sections of which they were members, and that each of said tenders was, in accordance with the instructions of this defendant, refused and that each of said complainants protested against the defendant's action in refusing to accept the payment of the monthly dues as tendered; that during 1911 and 1912 the complainants have wholly failed and refused to pay the rates of contribution fixed by the legislation of 1910, which became effective on January 1, 1911; that complainants have never at any time paid the actual mortuary cost of their insurance to the Supreme Lodge Knights of Pythias; that the following tables show the name of each complainant, his total mortuary contribution to the Supreme Lodge Knights of Pythias, plus accumulations at  $3\frac{1}{2}\%$ , his age at the time of the issuance of a certificate to him, and how much the cost of his insurance to the Supreme Lodge has been in excess of the payments made by him, together with accumulations thereon, which is termed "deficiency":

*Contributions.*

Name.	Amount of policy.	Plus accumulations.	Age.	Deficiency.
Joseph Holt.....	\$3,000	\$2,164.56	47	\$1,209.95
J. B. Chosolm.....	2,000	834.82	38	15.24
Thomas Carey .....	2,000	2,266.33	52	2,790.16
H. A. Weber.....	3,000	1,664.45	41	577.76
J. E. Jollet.....	3,000	1,296.88	41	46.30
V. Mauberret .....	3,000	1,285.61	33	165.97
H. Heidingsfelder...	3,000	2,020.20	46	1,128.42
D. R. Graham.....	.....	1,971.07	50	833.54
J. A. Douglas.....	3,000	1,234.55	32	156.60
Phillip Rahm .....	3,000	1,295.91	35	89.32
R. Carlin .....	2,000	963.99	34	57.80
E. F. Denecheaud...	3,000	2,782.28	54	2,597.50
283				
Frank Ribera .....	3,000	1,377.99	43	18.62
J. I. Barnett.....	1,000	795.15	50	629.67
Lewis Fishel .....	3,000	2,203.10	48	1,467.44
I. Schreck .....	3,000	2,209.52	48	1,435.27
T. S. Webber.....	3,000	1,065.57	29	43.38
John Leckert .....	2,000	1,185.13	43	353.90
W. R. Smith.....	.....	982.12	39	203.81
David Lemley .....	2,000	761.44	29	90.20

That the cost of the insurance referred to in this finding is the actual cost of carrying the risk without providing for any reserve or other factor, so the several deficiencies of complainants referred to would be much greater if in calculating the cost of insurance there was taken into account the necessity for providing a sufficient reserve.

332 That the persons who were members of the Fourth Class of the Insurance Department on the first day of February, 1911, contributed no part of the Mortuary Fund of the Fourth Class on that day; subject to the exception of a possible member who became such at an early age, thirty years or under,—but that all of said Mortuary Fund had been contributed by members of the Fifth Class who had theretofore transferred from the Fourth Class and members of the Fourth Class whose membership had been lapsed, except possibly by some members of the First and Second Classes, who may have contributed a relatively small sum.

That the said complainants during their membership caused a hypothetical deficiency in said Mortuary Fund of more than Thirteen Thousand Dollars (\$13,000); that is to say, instead of paying the full amount of the cost of their insurance—not including the maintenance of a proper reserve fund—they paid a total sum which was \$13,000 smaller than the total amount of the cost of their insurance.

On April 27th, 1911, the complainant, W. R. Smith, accepted a disability settlement of One Hundred Dollars and thereupon ceased to be a member of the Insurance Department of the defendant and is no longer a member thereof.

## 284

That prior to 190-, the Supreme Lodge Knights of Pythias created a Board of Control, which was charged, among other things, with the administration and protection of the funds of the Endowment Rank.

That certain officers of said Board of Control, including one Hinsey prior to 1901, made unauthorized investments of certain funds of the Endowment Rank, in mortgages on Texas land and in the Lexington Hotel property in the City of Chicago, Illinois, said investments amounting approximately to \$250,000, and that prior to said date certain expenditures in a small amount were made by the officers of said Board of Control which were unauthorized. That

333 when said unauthorized investments and expenditures were brought to the attention of the Supreme Lodge Knights of Pythias, the officers who had been guilty of such misconduct were removed and others elected in their places, and since 1901 the affairs of the Endowment Rank (Now Insurance Department) have been at all times honestly and faithfully administered by its officers.

That since that date five extra assessments have been levied as follows:

That the Supreme Lodge, subsequent to 1901, from time to time realized upon the securities in which its money had been so invested and sustained a net loss thereon of somewhere between \$25,000 and \$50,000 consisting principally of interest on the original sums invested, attorney's fees and court costs incurred in the collection of said money.

That subsequent to 1894 a single fund was maintained by said defendant in its Endowment Rank, known as the "Endowment Fund" into which was transferred all the funds of the Order belonging to all of the classes, First, Second, Third and Fourth and out of

## 285

which all expenses and death losses were paid down to and including December 31st, 1906.

That in 1900 at a meeting of the Board of Control, a resolution was passed providing that from and after December 31st, 1899, there should be two separate and distinct funds known as the "Mortuary Fund" and "Expense Fund", and in 1901 the Supreme Lodge duly enacted a law requiring the maintenance of such separate mortuary and expense funds. Said Board of Control, however, did not keep the securities representing the mortuary and expense funds separate, and although said funds existed, all moneys received were actually placed into one common depository. In 1907 an audit was made of the funds in the Insurance Department of the Defendant to ascertain what part of the funds on hand December 31st, 1906, belonged to the expense fund and what part of the mortuary fund of the Fourth



Class, and upon the completion of said audit said funds were actually separated upon the basis provided for by the Supreme Lodge and the securities representing the same were placed, as determined by said audit, part in the expense fund and part in the mortuary fund of the Fourth Class.

334 The securities representing the investment in Texas lands and in the Lexington Hotel property at Chicago, Illinois, and the other funds constituting the so-called Hinsey defalcation, had, subsequently to 1901, always been in the Endowment Fund. When said audit was completed in 1907, a part of these securities were placed in the mortuary fund of the Fourth Class and a part in the expense fund of the insurance department. Later, the amount which had been placed in the mortuary fund of the Fourth Class, about \$75,000 was transferred to the expense fund and other securities of equal value were transferred from the expense fund of the Insurance Department to the mortuary fund of the Fourth Class;

## 286

that the securities representing the unauthorized investments made by Officers of the Board of Control prior to 1901, did not result in augmenting or diminishing the mortuary fund of the Fourth Class in any amount. That said securities were placed in the expense fund of the Insurance Department only because of the division between the two funds, expense and mortuary, in accordance with the audit of 1907.

That the members of the Insurance Department at no time ever made any voluntary contributions to replace the funds so invested without authority or misapplied by said officers of the Board of Control of 1901.

All of the funds administered by the Endowment Rank (Or Insurance Department) were derived from regular or special assessments made upon the several members of the various classes, and from membership fees paid by them, together with the income derived therefrom.

That on May 15, 1901, one extra assessment was levied, the sum of which was \$113,786.00.

That since that date five extra assessments have been levied as follows:

2 in 1909 aggregating .....	\$82,922.11
3 in 1910 " .....	114,747.15

And that the above were the only extra assessments that were levied from May 1st, 1901, to the present time.

335 From January 1st, 1907, down to the time of the filing of the Bill of Complaint in this suit, seven monthly assessments were validly waived by the Board of Control in favor of the members of the Fifth Class, aggregating \$925,223.50 and during the same period no assessments were waived in favor of the members of the Fourth Class.

## XXI.

That since the organization of said Fifth Class the rates of in-

287

surance required to be paid by its members have at all times been and are adequate to meet accruing death claims and provide a sufficient reserve to protect existing and future policy holders against loss, and pay the face of their policies as they mature.

That the Supreme Lodge Knights of Pythias did at its regular biennial session held in 1910, adopt as it had a right to adopt under its constitution and by-laws and its contracts with its members, a new schedule of rates for the Fourth Class increasing the rates then in force, which increase became and was effective from and after the 1st day of January, 1911.

That the table of rates adopted was the same as the Fifth Class rates and was based upon the American Experience Table of Mortality with a  $3\frac{1}{2}\%$  interest assumption. That said rates were just, reasonable and necessary in order to enable the defendant society to meet its future obligations to its Fourth Class members.

That such rates were more than double the rates in force for the Fourth Class in 1884 and 1886 and materially greater than the rates in force for the Fourth Class under the revision of 1901.

That since the establishment of the rates of insurance now required of members of the Fourth Class, effective January 1st, 1911, the rates of insurance in said Fourth Class have been and now are sufficient to enable said Fourth Class to pay its current death losses and provide a sufficient reserve to protect its policy holders and pay the face of their claims as they mature, and that said Fourth and Fifth Classes of said Insurance Department, respectively, at the time complainant's bill of complaint was filed, were solvent and continuously have been and now are solvent.

336

## XXII.

That it is not practicable in the operation of the defendant's Insurance Department (formerly Endowment Rank) and has not been

288

practicable at any time to maintain separate and distinct expense funds out of which the expenses of the several classes should be paid; and that the maintenance of a single expense fund, from which the expenses of said entire Insurance Department are paid, or have been paid, is and has been, fair, just and equitable to the several classes of said Insurance Department (formerly Endowment Rank) and the members thereof, and is the usual and ordinary method practiced by insurance companies in general, and by fraternal beneficial societies or associations in particular, for providing funds with which to pay the expenses of such insurance companies and associations.

That if a receiver should be appointed for said Fourth Class for the purpose of winding up its affairs, and an accounting be had of its funds (including the Expense Fund of the Insurance Department) such action would yield the members of said Fourth Class, who were in good standing, January 1, 1911, a sum not exceeding \$100 each, deprive said members of the insurance protection they now enjoy, and leave a large number of them without ability to secure other insurance on account of their advanced age and infirmities, and that such action would likewise result in great injury to the Fifth Class of said Insurance Department and the members thereof by injuring the credit and standing of said entire Insurance Department, and probably causing large numbers of them to permit their policies of insurance to lapse, and deter others from becoming members of said Class.

That the benefits, if any, that will accrue to complainants, and other members of said Fourth Class in like situation, will be slight in comparison with the injury that will be suffered by a large majority of the members of said Fourth Class, and by said Fifth Class and the members thereof, and said Supreme Lodge.

337

289

## XXIII.

That the complainants, David Lemley (on October 10th, 1879) Henry A. Webber (on October 7th, 1879) and Moses Heidingsfelder (on March 1, 1880) signed applications for membership in the Endowment Rank of the Supreme Lodge Knights of Pythias, which contained among other things the following provision:

"I hereby agree to conform to and obey the laws, rules and regulations of the order governing this Rank now in force and that may hereafter be enacted or submit to the penalties therein contained."

That the complainants, Joseph Holt, (on January 4th, 1882) Lewis Fishel (On September 27th, 1882) Joseph Isaac Barnett (On October 25th, 1880) Thomas Carey (on April 3rd, 1882) and Ross Carlin (on April 18th, 1882) signed applications for membership in the Endowment Rank of the Supreme Lodge Knights of Pythias which contained among other things the following provision:

"I hereby agree that I will punctually pay all dues and assessments to which I may become liable and that I will be governed, and this contract shall be controlled by all the laws, rules and regulations of the order governing this Rank now in force or that may hereafter be enacted, or submit to the penalties therein contained."

That the complainants, Victor Mauberret (on April 7, 1884) Lewis Schreck (on July 2nd, 1884) James A. Douglas (on August 12th, 1885) Edward Deneschaud (on February 7th, 1886) John Leckert (on February 22nd, 1886) T. Sidney Webber (on January 13, 1887) and Phillip Rahm (on April 9th, 1887,) signed applications for membership in the Endowment Rank of the Supreme Lodge Knights of Pythias, which contained among other things the following provision:

"Please read carefully the following declarations and agreements and observe its import. \* \* \* I hereby agree I will punctually pay all dues and assessments to which I may become liable and that I will be governed and this contract shall be controlled by all the laws, rules and regulations of the order governing this Rank now in force or that may hereafter be enacted, or submit to the penalties therein contained, to all of which I willingly and freely subscribe."

That the complainants, John B. Chisolm (on July 19th, 1889) Joseph E. Jollet (on August 27th, 1890) Frank Ribera (on February 19th, 1891) and David R. Graham (on June 26th, 1889) signed applications for membership in the Endowment Rank of the Supreme Lodge Knights of Pythias, which contained among other things the following provisions:

"Read carefully the following declaration and agreement and observe its import. \* \* \* I hereby agree that I will punctually pay all dues and assessments for which I may become liable and that I will be governed and this contract shall be controlled by all the laws, rules and regulations of the order governing this Rank now in force or that may hereafter be enacted by the Supreme Lodge Knights of Pythias of the World or submit to the penalties therein contained, to all of which I willingly and freely subscribe."

That after said complainants had signed their respective applications they delivered the same to the Section Secretary of the Supreme Lodge in New Orleans and such applications were forwarded to the officers of the Endowment Rank Knights of Pythias, which officers sent to the Section Secretary in the City of New Orleans benefit certificates for each of said complainants, and said benefit certificates were delivered to said respective complainants in the City of New Orleans, the first premium in each case being paid, and by the laws

of the order being required to be paid before the delivery of said certificates to said respective complainants.

## XXIV.

That the complainants, Victor Mauberret, Lewis Schreck, Joseph Holt, Lewis Fishel, Moses Heidingsfelder, Thomas Carey, Joseph Barnett and Henry A. Webber were all at one time members of the First Class of the Endowment Rank Supreme Lodge Knights of Pythias and each held benefit certificates in said First Class, which said benefit certificates contained among other things the following provisions:

339 "This certifies that Brother — has received the Endowment Rank of the Order of Knights of Pythias in Section No. — and is a member in good standing in said Rank; and in consideration of the representations and declarations made in his application bearing date of — —, —, which application is made

a part of this contract, and the payment of the prescribed admission fee; and in consideration of the payment hereafter to said Endowment Rank of all assessments as required, and the full compliance with all the laws governing this Rank now in force or that may hereafter be enacted and shall be in good standing under said laws, the sum of One Thousand Dollars will be paid by the Supreme Lodge Knights of Pythias of the World to ——— \* \* \*

Provided, however, that if at the time of the death of the said Brother there shall be less than one thousand members in this class there shall only be paid a sum equal to one dollar for each member in good standing in this class; and it is understood and agreed that any violation of the within mentioned conditions or requirements of the laws in force governing this Rank shall render this certificate and all claims null and void, and that the said Supreme Lodge shall not be liable for the above sum or any part thereof."

## 292

That the complainants, Ross Carlin, Henry A. Webber, Thomas Carey, Moses Heidingsfelder, Lewis Fishel, Joseph Holt, Lewis Schreck and David Lemley, were members of the Second Class of the Endowment Rank Supreme Lodge Knights of Pythias, and each and all held benefit certificates in said Class, which provided—among other things:

"And in consideration of the payments hereafter to said Endowment Rank of all assessments as required and the full compliance with all the laws governing this Rank now in force or that may hereafter be enacted."

the said Supreme Lodge would pay to a named beneficiary the amount of the certificate,

"Provided, however, that if at the time of the death of said brother there should be less than 2,000 members in this class there shall only be paid a sum equal to one dollar for each member in good standing in this Class. And it is understood and agreed that any violation of the within mentioned conditions or the requirements of the laws in force governing this Rank, shall render this certificate and all claims null and void, and that the said Supreme Lodge shall not be liable for the above sum nor any part thereof."

That all of the complainants above mentioned who belonged at one time to the First and Second Classes of the Endowment Rank of the Supreme Lodge Knights of Pythias, transferred their membership to the Fourth Class of said Endowment Rank, after the same was created in 1884, and that all the complainants not mentioned above as having been members of the First and Second Classes, joined the Fourth Class of said Endowment Rank after its creation; that certificates were issued to all of the complainants in the Fourth Class, which contained, among other things, a provision that:

"In consideration of the payment hereafter to said Endowment

293

Rank of all monthly payments as required, and the full compliance with all the laws governing this Rank now in force, or that may hereafter be enacted",

upon the death of such member a certain sum should be paid to a named beneficiary.

"Provided, however, that if at the time of the death of said Brother one montly payment to Endowment Fund by members holding an equal amount of Endowment shall not be sufficient to pay the amount of Endowment held by said Brother, the benefit to be paid in case of death shall be a sum equal to one payment to the Endowment Fund by each member holding an equal amount of Endowment, and it is understood and agreed that any violation of the within mentioned conditions, or the requirements of the laws in force governing this Rank, shall render this certificate and all claims null and void, and that the said Supreme Lodge shall not be liable for the above sum or any part thereof."

341

XXV.

That each and all of the complainants paid to the defendant and to its successor down to January 1st, 1911, when the new Fourth Class rates become effective, all of the monthly payments, assessments and special assessments required to be paid by them, including the increased rates required to be paid under the revision of 1901, without any protest or objection whatsoever, and that at no time prior to August, 1910, was any objection or protest made by any member of the Fourth Class or of the Insurance Department to the payment of the rates of contribution required to be paid by him.

That the Fifth Class of the Insurance Department was established by legislation of the Supreme Lodge in 1906 and commenced operations on the 1st day of January, 1907; that none of these complainants ever at any time prior to August, 1910, made any protest

294

or objection whatsoever to the defendant, or to its Board of Control with reference to the establishment of the Fifth Class or the transfer of members from the Fourth to the Fifth Class of said Insurance Department, although from the 1st day of January, 1907, until August, 1910, more than 50,000 members had so transferred, which fact was well known to the complainants and all of them.

XXVI.

That at the time the plan for the creation of the Fifth Class was adopted in 1906, the following statutes were enacted by the defendant:

"Sec. -. All of the funds of the Insurance Department are hereby recognized to be trust funds and the same are to be received, held, controlled and disbursed by the Board in full appreciation of their trust character.

"Sec. 7. All moneys, bonds, mortgages, notes, credits, securities and properties of every kind, of the Insurance Department on hand at the close of business on the thirty first day of December, 342 A. D. 1906, not belonging to the First or Second Classes, are hereby declared to be a trust fund; said fund and its accretions, or so much thereof as may be necessary, to be used to assist in meeting the obligations to the Fourth Class, and on the first day of January, A. D. 1907, or as soon thereafter as may be possible, the Board shall issue and publish, as of close of business December 31st, 1906, to the members of the Insurance Department, a full and complete detailed statement showing the number of members of and amount of insurance in force in each class, the liabilities and character thereof, of each class in the Insurance Department; and the amount and character of all property of every nature belonging to the Insurance Department, held for each class, giving a detailed list of the same, and generally report the conditions of each

295

class as the same is on said thirty-first day of December, A. D. 1906."

That at its regular biennial session, of the Supreme Lodge in 1906, there was also adopted the following statute with reference to the Expense Fund of the Insurance Department.

"Sec. 16. The Expense Fund of the Insurance Department shall consist of:

A. That portion of members' payments and assessments allotted to the expense fund by the Supreme Lodge or that may be included in any table of rates as an expense loading.

B. All membership fees, fees for withdrawal and transfer cards, duplicate certificates, change of beneficiaries and all fees for supplies.

C. The increment from the expense funds that may be invested, and all increment from interest earnings on the investment of the mortuary fund in excess of earnings of  $3\frac{1}{2}\%$  per centum per annum, on such funds as may be invested.

343 D. All sums which are not specifically declared mortuary funds."

That said section last above set out has remained continuously in force to the present time and has never been amended, repealed or superseded. That at the time the same was adopted the Expense Fund had never at any time been treated as a Mortuary Fund and has never so been treated since the adoption of said section, and that there was nothing in the legislation of 1906 or any prior or subsequent legislation designating said Expense Fund as a Mortuary Fund.



That Section 7 as above, stated to have been adopted in 1906, was amended at the biennial convention of the defendant in 1908 to read as follows:

"Sec. 7. All of the moneys, bonds, mortgages, notes, credits, securities and properties of every kind of the insurance department on hand at the close of business on the 31st day of December, A. D.

296

1906, not belonging to the first or second classes, composing the mortuary fund of the fourth class, are hereby declared to be a trust fund—said fund and its accretions, or so much thereof as may be necessary, to be used to assist in meeting the obligations of the fourth class, and shall together with subsequent and future contributions of the members of the Fourth Class for mortuary purposes, and the accretions thereto, constitute the mortuary fund of the fourth class."

That said section last above set forth has remained continuously in force since 1908.

That it was provided in the legislation of 1906 of the defendant that each class of the Insurance Department should to the extent of a separation of its membership in a class, be treated as a distinct society; that of the amounts received from the Fourth Class members 85% should be paid into and be known as "The Mortuary Fund of the Fourth Class" and 15% paid into "The Expense Fund"; That of the amounts paid by the Fifth Class members that part of the  
 344 monthly payment equal to the mortuary cost of carrying the risk should be paid into a fund known as the "Mortuary Fund of the Fifth Class," and the remainder should be placed in "The Expense Fund to be used for paying the expenses of the Insurance Department."

That said provisions last above set forth have continued in full force and effect to the present time; that all of said legislation set out and referred to in this finding was adopted as a part of the general plan and scheme for the creation of the Fifth Class of said Insurance Department, the transfer of members from the Fourth Class to the Fifth Class, and the use of the Expense Fund for the payment of the joint expenses of the Fourth and Fifth Classes of said Insurance Department.

That the defendant in organizing the Fifth Class, used the common expense fund then set apart for the uses of the insurance De-

297

partment, and which consisted of \$394,082.25 belonging to the Fourth Class on December 31st, 1906. This fund was drawn upon for all expenses connected with the Fifth Class organization, including officers' and employees' salaries, traveling expenses, advertising, printing, stationery and postage, official publication, and actuarial expense. The average Fourth Class annual expense from 1901 to 1906 inclusive had been \$277,194; the average expense of the Fourth and Fifth Classes (constituting the Insurance Department) from 1907 to 1911 inclusive was \$450,441. The expense of the Insur-

Insurance Department in 1905 was \$309,017; in 1906 \$390,395; in 1907, \$485,551; in 1908 \$461,032.

Efforts were made within the Supreme Lodge itself, in 1910, at the session of the Supreme Lodge by Resolution moved and seconded, to secure a return of the above sum of \$394,082.25 to the Fourth Class, but such Resolution was not adopted but was voted down.

For the years 1906, 1907, 1908, 1909, 1910 and 1911 the expenses of the insurance department were as follows:

345	1906.	1907.	1908.	1909.	1910.	1911.
Supts. ....	\$153,380	\$192,729	\$174,176	\$149,010	\$117,355	\$202,554
Secys. ....	106,535	115,150	126,586	126,564	128,878	120,780
Officials ....	11,504	24,706	22,784	18,616	15,212	14,825
Employees ....	29,470	50,591	55,704	46,714	42,579	40,240
Travel ....	3,462	10,775	7,007	13,498	14,713	16,540
Advertis. ....	12,680	24,628	9,897	13,401	16,269	12,805
Postage ....	9,102	10,914	11,038	11,196	10,138	11,429
"News" ....	3,525	6,029	3,637	4,852	5,597	5,459
Actuary ....	2,679	2,090	1,737	2,388	5,512	3,300
Misc. ....	1,986	3,100	1,708	1,900	1,239	763
Supts. ....	00	0	1,350	6,128	2,401	4,414
Auditing ....	000	0	11,049	9,122	0	400

## XXVII.

That the legislation of the defendant with reference to the creation of the Fifth Class, the transfer of members from the Fourth to the Fifth Class, the re-rating of the Fourth Class, which became effective January 1st, 1911, and the use of the Expense Fund of the

298

Insurance Department for the joint expenses of the Fourth and Fifth Classes was all duly and legally adopted by the said defendant in pursuance to the constitution and laws of said defendant and in accordance with the mode therein prescribed for the adoption of amendments and the enactment of new legislation.

## XXVIII.

That one hundred and seventy-five persons and no more who were members of the Fourth Class at the time the re-rating of 1910, became effective, to-wit: January 1, 1911, made tenders to the defendant of their old rates of contribution under the rates established in 1901 and that no dissatisfaction has ever been expressed by any person who was ever a member of the Insurance Department of the Supreme Lodge, except said 175 members with the legislation creating the Fifth Class and authorizing the transfer of members from the Fourth Class to said Fifth Class.

Upon the foregoing facts said Master makes and states the following:

The equities of this suit are not with the complainants and the bill of complaint should be dismissed at the complainants' costs.

Accordingly a decree dismissing the bill of complaint at complainants' costs is recommended. Respectfully submitted. Edward Daniels, Master in Chancery. May 24, 1913.

299

And afterwards, to-wit: at the May Term of said Court, on the 6th day of June, 1913, before the Honorable Albert B. Anderson, judge of said court, the following further proceedings in the above entitled cause were had, to-wit:

Come now the complainants by Messers. Lazarus, Michel and Lazarus and Messers. Miller & Dowling, their solicitors, and file their exceptions to the report of the Master in Chancery herein, in the words and figures following, to-wit:

300

### **COMPLAINANTS' EXCEPTIONS TO MASTER'S REPORT.**

The complainants, and each of them severally, except to the report of Honorable Edward Daniels, Master in Chancery, filed herein on the 24th day of May, 1913, in the following particulars:—

First. To the Fourteenth finding of fact, in this, that the Master erroneously found therein that the creation of the Fifth Class and establishment and promulgation of transfer from the Fourth to the Fifth Class, was the only practicable known method of relieving defendant's Insurance Department from existing financial embarrassment and probably dismemberment and disintegration in the near future; whereas the evidence in the cause and said report elsewhere show that said plans were not practicable but said acts of the defendant caused the dismemberment and destruction of the Fourth Class as an operating Class, and unjustly promoted the Fifth Class to the detriment of said Fourth Class;

347 And to said Fourteenth finding of fact, in this, that the Master erroneously found therein that the expenditures made

301

in behalf of said Fifth Class were rendered necessary by the financial embarrassment of the Fourth Class and were made for its benefit and relief; whereas said evidence and report elsewhere show that said expenditures caused the depletion of the funds and membership of said Fourth Class, and discontinued its operations as a going organization.

Second. To the Twenty-first finding of fact, in this, that the Master erroneously found therein that the Supreme Lodge Knights of Pythias in 1910, had the right under its constitution, by-laws and

contracts with its members, to adopt the new schedule of rates for the Fourth Class, which became operative January 1, 1911, and that said rates were just, reasonable and necessary; whereas the evidence in the cause and said Master's report elsewhere show that such adoption of rates was unreasonable, was in violation of the Constitution of the defendant, of its fraternal obligations, its obligations under its declarations of trust and under its contracts with the complainants;

And to said Twenty-first finding of fact, in this, that the Master erroneously found therein that the rates of insurance in said Fourth Class are now sufficient to provide a sufficient reserve to protect its policy holders and pay the face of their claims as they mature, and that said Fourth Class was, at the time complainants' bill of complaint was filed and continuously has been and now is solvent; whereas the evidence and said Master's report elsewhere show that said Fourth Class, at the time complainants' bill was filed, was and now is composed of impaired and non-insurable risks who are insured under a schedule of rates not constructed or designed to protect policies issued to such classes of persons.

## 302

Third. To the Twenty-second finding of fact, in this, that the Master erroneously found therein that it was not practicable in the operation of the defendant's Insurance Department and has  
 348 not been practicable at any time, to maintain separate and distinct expense funds out of which the expenses of the several classes should be paid, and that the maintenance of a single expense fund from which the expenses of the entire Insurance Department are and have been paid, is and has been, fair, just and equitable to the several classes of said Insurance Department and the members thereof; whereas the evidence in said cause and said Master's report, elsewhere show that for a long period of time such separate expense funds were actually maintained by the defendant, and that it was practicable to apportion the expenses to each separate class; that the defendant expressly agreed with its Fourth Class members that said Fourth Class should, in its operations, be separate and distinct from said Fifth Class; and that the result of maintaining a single expense fund has been to promote the Fifth Class unjustly and inequitably at the expense and to the detriment of the Fourth Class;

And to the Twenty-second finding of fact, in this, that the Master erroneously found therein that the benefits, if any, that will accrue to the complainants and the other members of the Fourth Class in like situation, will be slight in comparison with the injury that will be suffered by a large majority of the Fourth Class and by the Fifth Class and the members thereof, and said Supreme Lodge; whereas the evidence in said cause, and said Master's report, elsewhere show that no injury will be done to said Fourth or Fifth Class or to said Supreme Lodge, by an equitable distribution of the assets of the Fourth Class among the members thereof, but that material injury

## 303

has been and will be done to said Fourth and Fifth Classes by the maintenance of the present rates, in violation of the defendant's Constitution of 1884 and 1886, and of its contracts with the Fourth Class members.

Fourth. To the Twenty-seventh finding of fact, in this, that the Master erroneously found therein that the legislation of the defendant with reference to the creation of the Fifth Class, the transfer of members from the Fourth to the Fifth Class, the re-rating  
349 of the Fourth Class, which became effective January 1, 1911, and the use of the Expense Fund of the Insurance Department for the joint expenses of the Fourth and Fifth Classes, was all duly and legally adopted by the defendant in pursuance to the Constitution and laws of the defendant, and in accordance with the mode therein prescribed for the adoption of amendments and the enactment of new legislation; whereas the evidence in said cause, and the findings of fact contained in said Master's report, elsewhere show that said legislation was adopted in contravention of defendant's Constitution of 1884 and 1886, and in violation of its representations, express declarations of trust and contracts with its Fourth Class members.

## To Conclusion of Law.

The complainants, and each of them severally, except to the Master's conclusion of law that the equities of this suit are not with the complainants and that the bill of complaint should be dismissed at the complainants' costs; because under the facts properly found, the complainants are entitled to a decree appointing a receiver for the Fourth Class, requiring an accounting of its funds, and a distribution of its assets among the membership of said Fourth Class, as

## 304

the same existed January 1, 1911; and because said conclusion is against law in that the complainants are thereby denied their rights as members of the Fourth Class of the defendant order, under the Constitution and contracts of the defendant and its declaration of trust (Signed) Lazarus, Michel & Lazarus (Signed) Miller & Dowling, Solicitors for Complainants.

Oral argument requested.

## 305

And afterwards, to wit: at the May Term of said court, on the 7th day of June, 1913, before the Honorable Albert B. Anderson, judge of said court, the following further proceedings in the above entitled cause were had, to wit:

Come now the parties, by counsel, and file their stipulation herein, in the words and figures following, to wit:

350

306

**STIPULATION.**

It is hereby stipulated by the complainants and the defendant in the above entitled cause that the issues raised by the cross-bill of complaint of the defendant and the answer of the complainants thereto and on the supplemental answer of the defendant in said cause (all of which issues relate to an alleged adjudication as to the disposition and use of a certain expense fund of the Insurance Department of the Supreme Lodge Knights of Pythias, amounting to \$394,082.25, and the additions and accretions thereto, in the case of Fritz Heimsoth v. the Supreme Lodge Knights of Pythias) shall be heard and determined by the Court, and that the reference here-

307

tofore made to the Master in this cause shall not be set aside, and that the issues raised by said cross-bill and answer thereto and said supplemental answer shall in nowise affect or vacate the reference heretofore made, and that for the purpose of determining the rights of the parties without the necessity of introducing evidence before the Court on such issues the following facts are stipulated to be true.

1.

That on the 27th day of January, 1911, one Fritz Heimsoth, purporting to act on behalf of himself and all other members of the Fourth Class of the Insurance Department of the Supreme Lodge Knights of Pythias, filed his bill of complaint in the Circuit Court of the United States for the District of Indiana against the Supreme Lodge Knights of Pythias and others, in the words and figures as set out in said cross-bill of complaint.

2.

That on the 16th day of March, 1911, said Supreme Lodge Knights of Pythias, together with its co-defendants except Ulysses S. G. Cherry, filed an answer to said bill of complaint in the words and figures as set out in said cross bill of complaint in this cause.

3.

That on the 22nd day of March, 1911, the complainant in said cause filed its general replication to said answer as set out in said cross-bill of complaint.

308

4.

That on the 10th day of April, 1911, said cause was referred to Edward Daniels, Master in Chancery of said Court, with in-

structions to report his findings of fact and state his conclusions of law thereon to said Court.

5.

That on the 15th day of April, 1911, a decree pro confesso was entered in said cause against Ulysses S. G. Cherry in the words and figures as set out in said cross-bill of complaint.

6.

That on the 22nd day of May, 1911, the defendants in said cause except said Cherry filed an amendment to their answer to said bill of complaint in the words and figures set out in said cross-bill of complaint.

7.

That on the 18th day of December, 1911, said Fritz Heimsoth, by leave, filed a supplemental bill of complaint in said cause in the words and figures set out in said cross-bill of complaint.

8.

That on the 21st day of December, 1911, said defendants except said Cherry answered said supplemental bill of complaint in the words and figures set out in said cross-bill of complaint.

309

That on the 12th day of January, 1912, the defendants in said cause except said Cherry amended their answer, said amendment being in the words and figures set out in said cross-bill of complaint.

10.

That on the 17th day of January, 1912, said defendants except said Cherry filed an amendment to their answer and a supplemental answer in said cause in the words and figures set out in said cross-bill of complaint.

352

10½.

That after said cause was referred and during the hearing thereof one W. R. Petree intervened in said cause by agreement of the parties and filed the intervening petition set forth in said cross-bill of complaint, and thereupon all the parties to said cause except said Ulysses S. G. Cherry entered into the stipulation set forth in said Cross-bill of complaint, in Subdivision 10½ of said cross complaint.

11.

That said Master in Chancery heard evidence in said cause in support of the issues joined therein, including the use and disposition



by said defendant, the Supreme Lodge Knights of Pythias, and the officers of its Insurance Department, of the said expense fund of \$394,082.25 and all additions and accretions thereto, and thereafter, on the 18th day of February, 1913, filed his report in the words and figures set out in said cross-bill of complaint.

310

That on the 24th day of March, 1913, the Court rendered and entered a decree in said cause in the words and figures set out in said cross-bill of complaint.

13.

That the decree so entered by said Court in said cause has not been modified, reversed or appealed from, but it is in full force and effect.

14.

That the cause of action sued on by complainants herein pertains in part to an alleged wrongful disposition and misuse of certain expense funds amounting to \$394,082.25 and the additions and accretions thereto, and that said action instituted by said Fritz Heimsoth and others against said Supreme Lodge also pertained to the alleged wrongful disposition and misuse of the same expense fund; that both of said actions are against the Supreme Lodge Knights of Pythias; that the bill of complaint of the complainants herein was filed on behalf of all members of the Fourth Class in good standing January 1st, 1911, and that both said Fritz Heimsoth and

W. R. Petree were members in good standing in the Fourth

353 Class of said Insurance Department of the Supreme Lodge Knights of Pythias on the first day of January, 1911; that said Fourth Class of said Insurance Department (sometimes described as "Endowment Rank") on behalf of which said Fritz Heimsoth purported to sue in said action wherein he was complainant, is the same as the Fourth Class of said Insurance Department described in the bill of complaint and answer in this case; that the Supreme Lodge Knights of Pythias, defendant in each of said

311

actions, is the same corporation; that said expense fund referred to in each of said suits is the same expense fund; that the issues both of law and fact raised by the pleadings in said respective suits with reference to the use and disposition of said expense fund are the same in both cases, but only so far as relates to such use and disposition of said expense fund; that the suit instituted by these complainants against the defendant Supreme Lodge Knights of Pythias involves additional questions of law and fact different from those involved in the action instituted by said Fritz Heimsoth, in that in this cause of action the complainants contest the right of the defendant to re-rate the members of said Fourth Class of the Insurance Department according to a system adopted by said Supreme Lodge Knights of Pythias, which issues of law and fact relating to the right of de-

fendant to rerate the members of the Fourth Class were in no wise involved in the action instituted by Fritz Heimsoth against said Supreme Lodge.

15.

It is further stipulated that upon the facts set forth and contained in the foregoing stipulation the Court may on the final hearing of this cause dispose of and determine the rights of the parties in this cause arising upon the issues tendered by said cross-bill and the answer thereto and the supplemental answer of the defendant to complainants' bill of complaint, and make such decree in the  
 354 premises as is proper. (Signed) Lazarus, Michel & Lazarus.  
 (Signed) Miller & Dowling, Solicitors for Complainant.  
 (Signed) James P. Goodrich, (Signed) Miller, Shirley, Miller & Thompson, Solicitors for Defendant.

312

And afterwards, to-wit: At the May Term of said Court, on the 8th day of August, 1913, before the Honorable Albert B. Anderson, judge of said court, the following further proceedings in the above entitled cause were had, to-wit:

313

Comes now the parties by their respective solicitors, and thereupon the court, having heard the argument of counsel upon the exceptions to the Master's report herein, and duly considered the same and being sufficiently advised in the premises overrules said exceptions and approves and confirms said report.

It is thereupon ordered, adjudged and decreed by the Court that the bill of complaint herein be and the same is hereby dismissed for want of equity.

And it is further ordered, adjudged and decreed that the complainants do pay to said defendant its costs herein expended, taxed at \$—.

314

#### DISTRICT OF INDIANA:

I, Noble C. Butler, Clerk of the District Court of the United States for the District of Indiana, do hereby certify that the above and foregoing is a full, true and complete transcript of the record and proceedings in the cause of Joseph Holt, et al., Plaintiffs, vs. Supreme Lodge Knights of Pythias, Defendant, as fully as the same appears of record in my office and that the decree entered in said cause has never been modified, reversed or appealed from but is in full force, virtue and effect.

Witness my hand and the Seal of said Court this 30th day of October, A. D. 1913. Noble C. Butler, Clerk. (Seal.)

#### 355 DISTRICT OF INDIANA:

I, Albert Anderson, Judge of the District Court of the United States, for said District, do certify that at the date of the foregoing

certificate, Noble C. Butler was and now is, the Clerk of the District Court of the United States for said District, and that his attestation aforesaid is in due form of law.

Witness my hand, this 30th day of October, A. D. 1913. Albert B. Anderson, Judge.

315.

UNITED STATES OF AMERICA,  
*District of Indiana, ss:*

I, Noble C. Butler, Clerk of the District Court of the United States for the District of Indiana, do hereby certify that Albert B. Anderson, whose genuine signature appears to the foregoing certificate, was at the time of signing same Judge of the District Court of the United States for the District of Indiana, duly commissioned and qualified; that full faith and credit are, and of right ought to be given to all his official acts as such in all courts of record and elsewhere.

In Testimony Whereof, I have hereunto set my hand and affixed the seal of said Court at my office in Indianapolis in said District, this 30th day of October, A. D. 1913. Noble C. Butler, Clerk.  
[Seal.]

356 **COPY OF EXHIBIT No. 8 AS PER STIPULATION.**

"235 Federal Reporter, Page 885.

(Circuit Court of Appeals, Seventh Circuit, July 18, 1916.)

No. 2126.

HOLT et al.

v.

SUPREME LODGE, KNIGHTS OF PYTHIAS.

Insurance 719 (3)—Fraternal Insurance—Assessment—Right to Increase.

The original charter of the Supreme Lodge of the Knights of Pythias authorized it to amend its charter and by-laws at will, while its present charter (Act June 29, 1894, c. 119, § 4, 28 St. 97) also authorized amendments at will provided they do not conflict with federal or state laws. The order, which was engaged in the business of fraternal insurance, several times in the past, upon discovery that the assessments charged were insufficient to carry the insurance, increased the insurance assessments. Held that, notwithstanding members became such when the constitution provided for monthly payments by each member to be computed ac-

cording to an appended table, the order had power to increase the assessments when it was discovered that those charged were insufficient to satisfy the death claims.

(ED. NOTE.—For other cases see Insurance. Cent. Dig. 1855; Dig. 719 (3).)

Appeal from the District Court of the United States for the District of Indiana.

Bill by Joseph Holt and others against the Supreme Lodge Knights of Pythias. From decree dismissing the bill, complainants appeal. Affirmed.

The suit is an omnibus bill in equity on behalf of 20 named plaintiffs on behalf of themselves and all others similarly situated (155) in number), for an accounting of trust funds for the insurance department to which plaintiffs belong, and for a receiver, on the ground that the department (known as the fourth class) is insolvent; also for a ratable distribution of such trust funds among the fourth class members.

The question is whether a fraternal beneficiary society has power to change a contract with an insured member that the rates shall not be changed, by doubling his monthly payments, and on his refusal to pay exclude him from all benefits.

Plaintiffs are citizens of Louisiana, and defendant was first organized under a general law of Congress entitled "An act to provide for the creating of corporations in the District of Columbia by general law." Its charter expired in 1890. Continuing as a defacto corporation or voluntary association for a time, it was reincorporated by the act of Congress of June 29, 1894. At that time it had organized the insurance department here in question, and had done business all over the country so there can be no serious question of its power to act outside the District of Columbia, and where it was authorized to act by its charter of 1894. A later act of June 7, 1900 (c. 861, 31 Stat. 708) ratified meetings of its governing body held outside the District.

This suit was begun January 25, 1911, the jurisdiction depending on the fact that one of the parties is a federal corporation. In its facts the case is substantially the same as *Knights of Pythias v. Mims*, 241 U. S. 574, 36 Sup. Ct. 702, 60 L. Ed. 1179, decided by the Supreme Court June 12, 1916; the only difference being in the form of the suit.

Plaintiffs' right to equitable relief depends entirely on the question whether the constitution of the Supreme Lodge, and its by-laws, in force when they respectively became members, constitute a contract which could not be changed by the defendant without plaintiffs' consent. It seems to be contended by the solicitors for plaintiffs that if defendant's constitution gave it no right to change the contracts or impair the vested rights under them, such contracts may be regarded as still in force, and defendant compelled to perform them. But the bill itself goes only upon the theory that defendant has diverted trust funds in which plaintiffs are in-

terested, and the only relief prayed for is the appointment of a receiver of such trust funds, with power to have an accounting thereof from defendant, in order that plaintiffs may receive their ratable shares. There is nothing in the bill seeking specific performance of the insurance certificates, or for a recovery of damages for the breach of plaintiffs' contracts; simply the enforcement of a trust relating to the funds on hand when the breach occurred, through payment to plaintiffs of their ratable shares in such trust funds. The case therefore turns on the question whether such a society has power, either under its constitution or otherwise, to change an impracticable or illusory insurance plan without accounting to dissenting members for trust funds belonging to them as such; even though such change may be necessary to the very life and preservation of the society.

The insurance afforded by the order is extended only to those who are members, the far greater proportion of the members not being insured therein. The order generally, however, has charge and jurisdiction over the insurance department. The insurance at first was divided into three classes, the different classes having different privileges and rates. As time passed, it was found that the rates were insufficient and that with such classifications the plan could not be successfully carried out; thereupon, a fourth class was created, in which, unlike the others, provision was made for the accumulation of an expense fund and a mortuary fund calculated to supplement the monthly assessments and obviate the difficulties arising from a constantly increasing death rate through the advancing age of members. To accumulate such funds and meet the increasing cost of insurance, the rates in this class were materially advanced over the other classes. Business in the other classes ceased, in that no attempt was made to bring new members into them. In course of time the first three classes became practically extinct, there being now only a few members, less than ten in all. Many, if not most of them, having gone into the fourth class, it was provided that the latter class should have no relation to the other classes, but should be practically independent of them, and that the fund accumulated therein should be for the benefit only of that class. Complainants are all persons advanced in years, now past the insurable age, who have for many years past been members of the order, most of them holding original certificates in the first three classes, which were then transferred to the fourth, and all of them were members of that class at and for many years previous to the beginning of this suit.

In 1908, long after the plaintiffs had become insured members of the fourth class, the society discovered that the rates in force, including those under the constitutions of 1884 and 1886, were entirely inadequate to maintain a sufficient mortuary fund.

About one-half of the plaintiffs became insured, while the constitution of the lodge which was adopted in 1884 was in force, among other things providing for monthly payments by each member according to his age, and appending a table of monthly rates. The fol-

lowing clause of the instrument is relied upon by plaintiffs: "Said monthly payments shall be based upon the average expectancy of life of the applicant and shall continue the same as long as his membership continues." The rest of the plaintiffs joined lodge after the constitution of 1886 had been adopted, which provided for monthly assessments according to a specified table of rates, and also contained the same provision as to permanent rates as the former one. Later constitutions contained this clause by providing that the rates should remain the same unless changed by the lodge or its board of control.

In regard to the express reserved power to change the rules governing insurance contracts, some of the plaintiff's signed applications agreeing to abide by the rules and regulations of the lodge then in force or thereafter enacted, and in the applications of the others the language was that their contracts should be controlled by the laws, rules and regulations, then in force or thereafter enacted. Plaintiffs' certificates or policies contained similar provisions. The original charter of the corporation provided that the Supreme Lodge might amend its constitution and by-laws at will, and section 4 of its present congressional charter provides that the society may amend its constitution at pleasure, provided the amendments do not conflict with the laws of the United States or any State. This power, as  
 360 we have seen, was exercised in 1888 and later years by providing that the insured members should continue their original payments unless otherwise fixed by the lodge. In 1906 a more positive clause was adopted, to the effect that the laws of the order, and all amendments thereto, should be part of the insurance contracts.

It further appears that all the plaintiffs submitted to certain increases made by the lodge in their insurance rates, and paid the additional sums required by such legislation down to January 1, 1911, when the new rates became effective, which they refused to pay.

Henry L. Lazarus, of New Orleans, La. for Appellants.  
 Sol. H. Esarey, of Indianapolis, Ind. for appellee.

Before Mack and Alschuler, Circuit Judge, and Sanborn, District Judge.

SANBORN, *District Judge* (after stating the facts as above):

In the Mims Case, 241, U. S. 574, 36 Sup. St. 702, 60 L. Ed. 1179, the Supreme Court decided that the benefit certificate of the member "was not a contract, but was a regulation subject to the possibility inherent in the case" and that the "essence of the arrangement was that the members took the risk of events, and if the assessments levied at a certain time were insufficient to pay a benefit of a certain amount, whether from a diminution of the members or any other cause, either they must pay more or the beneficiary take less." No possible distinction can be made between this litigation and the Mims Case brought against the same society.

The decree dismissing the bill is affirmed.

361 **EXHIBIT 9, REQUESTED BY MR. LIVINGSTON, ATTORNEY FOR THE PLAINTIFF, IN ACCORDANCE WITH STIPULATION.**

*"The Supreme Constitution of the Order of Knights of Pythias.*

In Effect October 22, 1906—P. P. XLIII.

Preamble.

The Supreme Lodge Knights of Pythias, a corporation existing by virtue of the Act of Congress approved June 29, 1894, is the source of all authority in the order of Knights of Pythias, and does hereby ordain and establish this Supreme Constitution.

Article I.

Reserved Powers.

The Supreme Lodge Knights of Pythias hereby reserves to itself all powers which are not herein delegated.

Article II.

The Supreme Law.

The Supreme constitution and the laws and rituals enacted by the Supreme Lodge in accordance therewith shall be the Supreme law of the order of Knights of Pythias.

Article III.

The Composition of the Order.

The order of Knights of Pythias shall be a secret fraternal organization, composed of persons upon whom any rank of the order shall have been legally conferred.

Article IV.

The Structure of the Order.

The order shall be constituted as follows:

Par. a. The Supreme Government.

Par. b. Such grand lodges as possess warrants or charters legally granted, which have not been surrendered, suspended or revoked.

Par. c. Such subordinate lodges as possess warrants or charters legally granted, which have not been surrendered, suspended or revoked.



## Article V.

## The Ranks of the Order.

The ranks of the order shall be the following and no others:

Par. *a.* The ranks of knighthood, known as page, esquire and knight, as established in the ritual of the order for subordinate lodges.

Par. *b.* The grand lodge rank, which shall be attained only by a past chancellor in good standing, and in such manner as the Supreme Lodge may by law prescribe.

Par. *c.* The Supreme Lodge Rank, which shall be attained only by a past grand chancellor in good standing, and in such manner as the Supreme Lodge may by law prescribe.

## Article VI.

## The Honors of the Order.

The honors of the order shall be the following and no others:

Par. *a.* Past chancellor, which shall be attained, upon the installation of his successor, by every chancellor commander who shall have served to the end of his official term; and, at the institution of a subordinate lodge, by the four members thereof who shall have been chosen by the lodge to receive that honor; and by the keepers of records and seal and masters of finance of subordinate lodges who have served or shall hereafter serve their respective lodges at least five consecutive years in said office.

Par. *b.* Past grand representative, which shall be attained by every past chancellor who shall have served as grand representative during at least one convention of a grand lodge.

Par. *c.* Past grand chancellor, which shall be attained, upon the installation of his successor, by every grand chancellor who shall have served to the end of his official term; and, at the institution of a grand lodge, by two members thereof who shall have been elected Supreme Representatives; and by all grand keepers of records and seal and all grand masters of exchequer who shall have served in either of such offices for ten consecutive years in their respective grand domains.

363 Par. *d.* Past Supreme Representative, which shall be attained by every past grand chancellor who shall have served as Supreme Representative during at least one convention of the Supreme Lodge.

Par. *e.* Past Supreme Chancellor, which shall be attained, upon the installation of his successor, by every Supreme Chancellor who shall have served to the end of his official term.

## Article VII.

## The Supreme Government.

The Supreme Government shall consist of three co-ordinate departments, viz: A legislative department, an executive department and a judicial department.

## Article VIII.

## The Legislative Department.

Section 1. The legislative powers of the Supreme Government shall be vested in a Supreme Lodge. All such powers not herein delegated to grand or subordinate lodges are hereby reserved to the Supreme Lodge.

Section 2. The Supreme Lodge shall be composed of:

Par. a. All Past Supreme Chancellors in good standing in their respective grand and subordinate lodges.

Par. b. Its officers, as designated in this constitution.

Par. c. The Supreme Representatives legally elected or appointed.

Section 3. The officers of the Supreme Lodge shall be:

The Supreme Chancellor,

The Supreme Vice Chancellor,

The Supreme Prelate,

The Supreme Keeper of Records and Seal,

The Supreme Master of Exchequer,

The Supreme Master at Arms,

The Supreme Inner Guard,

The Supreme Outer Guard.

They shall be elected biennially, as provided by law, and shall hold office for the term of two years, or until their successors shall have been duly elected and installed. They shall be past grand chancellors who have received the Supreme Lodge Rank, and who are in good standing in their respective grand and subordinate lodges; provided, that the Supreme Chancellor must have attained the rank of knight at least ten years prior to his election.

364 Section 4. Each grand domain shall be entitled to two Supreme Representatives, and to one additional Supreme Representative for each ten thousand members of the subordinate lodges within such grand domain on the thirty-first day of December immediately preceding the election or appointment of such Supreme Representative; provided, that no grand domain shall be entitled to more than five Supreme Representatives.

Section 5. Supreme Representatives shall be elected in the same manner as grand lodge officers are elected; provided, that each grand domain may elect an Alternate Supreme Representative for each Supreme Representative elected. Such Alternate Supreme Representative shall possess all the qualifications required by the Supreme Constitution for a Supreme Representative. In case the Supreme

Representative for whom said Alternate Supreme Representative was elected shall be unable from any cause to attend any Supreme Lodge convention for which he was elected, said Alternate Supreme Representative shall be entitled to represent the grand domain from which he was elected, and be entitled to all the rights and privileges of a Supreme Representative; provided, that only one mileage and per diem compensation shall be allowed or paid for each Supreme Representative to which a grand domain may be entitled. If a vacancy occur in the position of Supreme Representative and of his Alternate Supreme Representative, either by failure to elect or from other cause, or a grand domain become entitled to increased representation, such vacancy may be filled or such increased representation may be provided for in such manner as the grand lodge may prescribe.

Section 6. The term of a Supreme Representative shall be four calendar years from the first day of January in the even numbered year following his election; provided, that the term or any additional Supreme Representative elected or appointed in an even numbered year shall begin with the date of his election or appointment and expire on the thirty-first day of December of the next succeeding odd numbered year; provided also, that the Supreme Lodge  
365 may by statute so regulate such terms of service that the terms of one half, as near as may be, of the Supreme Representatives for any grand domain shall expire on the thirty-first day of December of each odd-numbered year.

Section 7. A Supreme Representative, at the time of his election or appointment and during his entire term of service as such, must be a past grand chancellor in good standing in his grand lodge and in a subordinate lodge within its domain, not the holder of any office in his grand lodge, and an actual and bona fide resident of the domain of such grand lodge; otherwise, his rights as Supreme Representative shall cease and determine and a vacancy shall be held to exist in such position.

Section 8. All past grand chancellors in good standing in their respective grand and subordinate lodges, who shall have received the Supreme Lodge Rank, shall be admitted to the conventions of the Supreme Lodge.

Section 9. The regular conventions of the Supreme Lodge shall be held biennially, at such time and place as may have been designated at the preceding regular convention; provided that, if the time and place were not so designated, a convention shall be held in the City of Washington, in the District of Columbia, on the Fourth Tuesday of April in the succeeding even-numbered year; and provided also that, should any public calamity or imperative exigency so require, the Supreme Chancellor, by and with the consent of a majority of the officers of the Supreme Lodge, may designate a different time or place at which such convention shall be held. The Supreme Lodge may provide by law for the holding of special conventions.

Section 10. A quorum of the Supreme Lodge for the transaction of business shall be a majority of the members thereof; provided, that one-third of the members may receive and act upon certificates and

credentials, and a less number may meet and take a recess from day to day.

Section 11. Each member of the Supreme Lodge shall be entitled to one vote, except as otherwise prescribed herein.

366 Section 12. Par. *a*. The Supreme Lodge shall pass upon and determine all questions relative to the qualification and election of its members, and may by law provide for the impeachment and removal from office of the Supreme Chancellor or a Supreme Tribune, and for the trial and removal from office of any officer of the Supreme Lodge other than the Supreme Chancellor, and for the trial and expulsion of members of the Supreme Lodge.

Par. *b*. It shall provide by law a revenue for the Supreme Government, and make appropriations of money for its maintenance; but no moneys shall be drawn from the exchequer of the Supreme Lodge except as prescribed by law. A statement of all receipts and expenditures of the Supreme Government shall be reported by the proper officers to the Supreme Lodge, and shall be included in the official Record of each regular convention thereof.

Par. *c*. It shall define offenses against the order and against the Supreme Law, and prescribe penalties therefor.

Par. *d*. It shall enact laws for the promotion of the general welfare of the order, and such as shall be necessary to carry into execution the powers vested in the Supreme Government.

Section 13. All laws enacted by the Supreme Lodge shall be of general application, except as otherwise prescribed in this constitution; shall be formulated as statutes, shall be styled "Supreme Statutes," and when introduced and while under consideration, shall be styled "propositions."

Section 14. A proposition shall not embrace more than one subject, which shall be clearly expressed in its title.

Section 15. A proposition to amend or repeal a statute shall recite in its title the number of the section to be repealed or amended, and a proposition to amend a statute, shall in addition set forth in full the language of the statute as it will read if amended.

Section 16. Except as otherwise provided herein, no proposition shall become a statute until it shall have passed three successive readings, the second and third of which shall not be had on the same calendar day.

367 Section 17. The affirmative vote of a majority of the members of the Supreme Lodge shall be required for the final passage of a proposition. Such vote shall be taken viva voce, or by standing count, unless a roll call is demanded by at least five members of the Supreme Lodge entitled to vote on the proposition, in which case the roll shall be called and the yeas and nays recorded.

Section 18. When a proposition shall have failed to pass, no proposition embracing the same subject shall be considered at the same convention of the Supreme Lodge, except by the affirmative vote, by yeas and nays, of a majority of all the members of the Supreme Lodge.

Section 19. The enacting clause of every proposition shall be as follows: "Be it enacted by the Supreme Lodge Knights of Pythias."

Section 20. All statutes shall take effect sixty days after final passage, unless therein otherwise provided.

Section 21. The resolving clause of every resolution shall be as follows: "Be it resolved by the Supreme Lodge Knights of Pythias."

Section 22. A journal of the proceedings of the Supreme Lodge shall be kept, and an official record shall be published in such manner as the Supreme Lodge may by law prescribe.

## Article IX.

### The Executive Department.

Section 1. The executive powers of the Supreme Government shall be vested in the Supreme Chancellor.

Section 2. The Supreme Chancellor shall be Commander in Chief of the military department.

Section 3. In case of the removal from office, death or resignation of the Supreme Chancellor, or in case the Supreme Council shall declare his permanent inability to discharge the duties of his office, the Supreme Vice Chancellor shall succeed to the office of Supreme Chancellor. In case of the temporary inability of the Supreme Chancellor to discharge the duties of his office, said duties shall devolve upon the Supreme Vice Chancellor during the continuance of such inability.

368 Section 4. In case of the death, resignation, removal from office or inability of both the Supreme Chancellor and the Supreme Vice Chancellor, the vacancies shall be filled as the Supreme Lodge may by law prescribe.

Section 5. The Supreme Chancellor may require information in writing from any officer of the Supreme Lodge pertaining to the duties of his office.

Section 6. Except when otherwise prescribed by law, the Supreme Chancellor shall fill by appointment any vacancy in an office of the Supreme Lodge which may occur during its recess.

Section 7. The Supreme Chancellor may, as prescribed by law, appoint and commission Deputies Supreme Chancellor for the performance of such duties as may be prescribed by statute.

Section 8. The Supreme Chancellor, at each regular convention of the Supreme Lodge, shall submit to it a report of all his official acts during its recess. His report shall contain information in regard to the state of the order, and such recommendations as he may deem necessary or expedient.

Section 9. The Supreme Chancellor, during the recess of the Supreme Lodge, shall have authority to grant, in the manner prescribed by law, warrants for the institution of grand lodges and warrants for the institution of subordinate lodges under the immediate control of the Supreme Lodge; and warrants so granted shall be in force until suspended or revoked in the manner prescribed by law or revoked by charters duly granted.

Section 10. The Supreme Chancellor shall have the power to grant such dispensations as the Supreme Lodge may authorize by law.

Section 11. The Supreme Chancellor shall require the execution and delivery to him of the bonds which may by law be required of the officers of the Supreme Lodge, and he shall be the custodian of such bonds.

369 Section 12. The Supreme Chancellor shall select and promulgate such passwords for the order as may be prescribed by law, and may change the same when in his judgment it may be advisable.

Section 13. The Supreme Chancellor shall perform such other duties as may be prescribed by law.

Section 14. The Supreme Chancellor shall receive such compensation as the Supreme Lodge may prescribe by law, which compensation shall not be increased or diminished during his term of office.

## Article XI.

### Grand Lodges.

Section 1. A grand lodge shall not be instituted with less than ten subordinate lodges, having an aggregate membership of not less than one thousand.

Section 2. A grand lodge shall be composed only of past chancellors who have attained the grand lodge rank.

Section 3. The domain of a grand lodge shall be the state, district, territory or province in which the same is located as specified in its warrant or charter; provided, that not more than one grand lodge shall exist in any state, district, territory or province. In case the states, districts, territories or provinces in which two or more grand domains are situated shall have been combined or authorized by law to unite into one political division, all grand lodges existing therein may be united and consolidated in such manner as the Supreme Lodge may prescribe; and the states, districts, territories or provinces so united or combined or authorized to unite or combine into one political division shall become one grand domain. Such consolidation may be provided for either by general or special statute.

Section 4. A grand domain composed of more than one state, district, territory or province may be divided into two or more grand domains, in such manner as the Supreme Lodge may by law prescribe.

370 Section 5. Territory in which no grand lodge exists may be added temporarily to the domain of an adjacent grand lodge, when so ordered by the Supreme Lodge or the Supreme Chancellor.

Section 6. The following legislative powers are hereby granted to each grand lodge:

Par. a. To pass upon and determine all questions relative to the qualification and election of its members.

Par. b. To enact laws, not in conflict with the Supreme law, for its own government and protection, and to prescribe rules of procedure for the conduct of its business.

Par. *c.* To prescribe the powers and duties of its officers and committees, except as otherwise provided by Supreme law.

Par. *d.* To provide by law for raising revenue and disbursing the same by appropriations.

Par. *e.* To define offenses against its laws, and to prescribe penalties therefor.

Par. *f.* To enact laws for the government of subordinate lodges within its domain, not in conflict with Supreme law.

Par. *g.* To provide for the granting of warrants and charters for subordinate lodges within its domain, and for the issue, suspension, revocation and restoration thereof; and to provide by law for the consolidation of two or more subordinate lodges within its domain.

Par. *h.* To enact laws, not in conflict with Supreme law, for the promotion of the general welfare of the order in its domain.

Par. *i.* To enact laws to enable members of defunct lodges to retain their membership in the order.

Par. *j.* To enact such laws as shall be necessary or proper to carry into execution all powers herein granted.

Section 7. The ritualistic officers of a grand lodge shall be such as are prescribed in the grand lodge ritual. The constitutional officers of a grand lodge shall be such as may be prescribed in its constitution.

371 Section 8. The term of a ritualistic officer of a grand lodge shall be one official year.

Section 9. Each grand lodge shall provide by law for the holding of regular conventions, annually or biennially.

Section 10. Each grand lodge shall have a constitution for its own government, and shall enact such legislation as shall secure conformity to the Supreme law and to the decisions of the Supreme Tribunal from the subordinate lodges and members of the order within its domain.

Section 11. Par. *a.* A grand lodge may create an independent co-ordinate department, known as the legislative branch, wherein shall be vested all the legislative powers of the grand lodge.

Par. *b.* A grand lodge may create an executive department, to be presided over and conducted by the grand chancellor, in which shall be vested all the executive powers of the grand lodge.

Par. *c.* A grand lodge may create a judicial department, in which shall be vested judicial powers, or it may reserve such powers to itself.

Section 12. The warrant or charter of a grand lodge may be suspended by the Supreme Chancellor or the Supreme Lodge, as may be prescribed by law.

Section 13. The suspension of the warrant or charter of a grand lodge may be terminated by the Supreme Chancellor or the Supreme Lodge, as may be prescribed by law.

Section 14. The warrant or charter of a grand lodge may be revoked only by the Supreme Lodge, as may be prescribed by law.



## Article XII.

## Subordinate Lodges.

Section 1. A subordinate lodge shall be instituted only as may be prescribed by Supreme law, and shall exist only by virtue of a warrant or charter issued in accordance therewith. It shall consist of not less than fifteen members, seven of whom shall constitute a quorum. It shall have and exercise Pythian authority and  
372 control over such territory as may be prescribed by law, subject to the laws established by the Supreme Government and by its grand lodge. Two or more subordinate lodges may be given concurrent territorial jurisdiction when located in the same city or town or other contiguous territory.

Section 2. The ritualistic officers of a subordinate lodge shall be such as are prescribed in the subordinate lodge ritual. They shall be nominated, elected and installed, and vacancies in office shall be filled, as prescribed by Supreme law. The official terms of such officers shall continue for six months from the first day of January and the first day of July in each year, or until their successors shall have been elected and installed; provided that, in grand domains in which grand lodges so enact, such terms shall continue for twelve months from the first day of January in each year.

Section 3. A subordinate lodge may elect or appoint such trustees or other non-ritualistic officers as may be authorized by its grand lodge.

Section 4. Each subordinate lodge shall display its warrant or charter in the lodge room whenever in session.

Section 5. No convention for the transaction of business or work shall be held, and no excursion or entertainment shall be had, by a subordinate lodge on the first day of the week, commonly called Sunday.

Section 6. The ranks of knighthood shall be attained and conferred only in accordance with the requirements of the Supreme law. The conditions of eligibility to such ranks shall be uniform, and shall be fixed by the Supreme statutes; provided always, that no person shall be initiated into the order unless he be a white male, of good moral character, twenty-one years of age and a believer in a Supreme Being; and provided further, that the fees for the ranks of knighthood shall not be less than ten dollars in the currency of the United States of America or its equivalent in the currency of the country in which the lodge is located.

373 Section 7. Membership in a subordinate lodge may be attained and terminated only as prescribed by Supreme law. Every person claiming the rights, benefits and privileges of the order must be a member of a subordinate lodge; provided, however, that a grand lodge may by law prescribe means for members of defunct lodges to retain their membership and preserve their rights, benefits and privileges in the order.

Section 8. Subordinate lodges may provide for and pay their members weekly or funeral benefits, or both.

Section 9. The warrant or charter of a subordinate lodge shall not be suspended, revoked or restored, except in the manner prescribed by Supreme law.

### Article XIII.

#### The Insurance Department.

The insurance department, known as the Endowment Rank, established for the purpose of providing indemnity for the beneficiaries of deceased members of the order, is a fraternal beneficiary society, and shall be governed by such laws as the Supreme Lodge may enact or authorize; provided, that the attainment of membership in such insurance department shall be restricted to members of the order who have attained the rank of knight and are in good standing in a subordinate lodge, but shall not be compulsory upon any member of the order."

374

### EXHIBIT No. 10.

Requested by Mr. Livingston, Attorney for the Plaintiff, in accordance with the stipulation, being a part of the Supreme Constitution and Statutes of the Supreme Lodge Knights of Pythias, adopted by the Supreme Lodge at the convention of 1906, with amendments adopted at the conventions of 1908, 1910, 1912 and 1914, beginning on page 107 of said statutes and continuing to and including the first two lines on page 131.

#### "Division VII.

#### Auxiliary Departments.

##### Part 1.

#### Insurance Department.

##### Enacting Clause.

Be it enacted by the Supreme Lodge Knights of Pythias, that the following code of statutes, being part i of division vii, shall constitute and be known as the Supreme Statutes of the order of Knights of Pythias governing the insurance department, and shall be designated and cited by the words "Supreme statutes;" and as such are hereby adopted and shall become the law of the order, to take effect from and after the adoption of this enacting clause, except such parts thereof as to which a different provision is made herein.

All laws of a general nature in force when the Supreme statutes take effect, which are repugnant thereto, are hereby repealed, except as follows:

The adoption of the Supreme statutes, and the repeal of existing laws therein provided for, shall not affect any offense or act committed or done, or any penalty or forfeiture incurred, or any right established, accrued or accruing, before the Supreme statutes take effect; but when a penalty or forfeiture is mitigated by the Supreme statutes, such provisions may be extended and applied to any conviction or judgment pronounced after said appeal; nor shall such repeal affect any prosecution or charges pending at the time it takes effect, for an offense committed under any of the provisions of a law repealed, except that the proceedings therein shall conform, as  
 375 nearly as practicable, to the provisions of the Supreme statutes.

When a period of time, prescribed in any law repealed, for acquiring a right or barring a remedy, or for any other purpose, has begun to run, and the same or a similar limitation is prescribed in the Supreme statutes, the time of limitation shall continue to run, and shall have the like effect, as if the whole period had begun and ended under the operation of the Supreme statutes.

## Chapter I.

### Name, Purposes, Composition, and Territory.

401. The word "society," as used in these laws, shall mean "The Supreme Lodge Knights of Pythias, Insurance Department."

(a) The words "Supreme Lodge," shall mean the legislative and governing body of the society or order of Knights of Pythias.

(b) The word "lodge" shall mean a subordinate lodge of the Knights of Pythias under the jurisdiction of the Supreme Lodge Knights of Pythias, or under the jurisdiction of some grand lodge which is itself under the jurisdiction of the Supreme Lodge Knights of Pythias.

(c) The word "section" shall mean a subordinate body of the insurance department of the Supreme Lodge Knights of Pythias.

(d) The word "board" shall mean the board of control of the insurance department of the Supreme Lodge Knights of Pythias.

(e) The words "officer," or "officers" shall mean a Supreme officer or Supreme officers of the insurance department of the Supreme Lodge Knights of Pythias.

(f) The words "insurance department" and "The Supreme Lodge Knights of Pythias, insurance department," shall mean the same as the words "The Supreme Lodge Knights of Pythias," restricted only and relating solely to the insurance department of the Supreme Lodge Knights of Pythias, heretofore commonly called the Endowment Rank Knights of Pythias.

376 (g) The words "Endowment Rank," as heretofore used in connection with this society, shall mean the same as the words "insurance Department of the Supreme Lodge Knights of Pythias."

(h) The words "monthly payment," as used in these statutes, shall mean the same as a monthly assessment.

402. The name of this society shall be "The Supreme Lodge Knights of Pythias," and in all matters and things respecting and relating to said Supreme Lodge, as referred to or contained in division vii, part i, and the business therein provided for, the use of the name, "The Supreme Lodge Knights of Pythias, insurance department," is adopted and authorized for convenient designation. It is incorporated by act of the congress of the United States, approved by the president, June 29, 1894, and exists as a corporation by reason of said act and the act amendatory thereof, and the original articles of incorporation and the amendments thereto.

403. This society in its insurance department is a fraternal beneficiary society. Its purposes, in accordance with its charter, organization and plans, are to provide for and pay benefits to the beneficiaries of such deceased members of the order of Knights of Pythias as may die while members in good standing in the insurance department of the Supreme Lodge Knights of Pythias, and in good standing in a subordinate lodge of said order, and to pay to members in like good standing benefits in case of sickness, temporary or permanent physical disability, as may be provided in its laws.

404. This society in its insurance department shall be composed of an unlimited number of members, organized into subordinate bodies known as sections, and whose obligations and rights and the rights of their beneficiaries are limited by the class or plan to which each member belongs. Membership in the insurance department can be attained only by members in good standing in a subordinate lodge of this society, and who possess the following qualifications, viz:

377 (a) Who have attained the rank of knight in a subordinate lodge of this society.

(b) Who are between the ages of twenty-one and and fifty years; provided that, except in states, territories or provinces where the laws forbid, membership may be obtained in the fifth class by applicants who are between the ages of twenty-one and sixty years and who are otherwise eligible.

(c) Who are mentally, morally and physically eligible to be classed as desirable insurance risks.

(d) Who are not following any calling or occupation in the prohibited class as hereinafter named, nor engaged in any business deemed by the board to unfit one for insurance.

Membership can be maintained in the insurance department of this society only by the observance on the part of its members of the provisions contained and mentioned in these statutes.

At the date of the adoption of these statutes, the membership of the insurance department (heretofore called the "Endowment Rank") is hereby declared to be divided into three classes, viz.:

(i) The first class, composed of not to exceed four members.

(ii) The second class, composed of not to exceed four members.

(iii) The fourth class, composed of all other members of said insurance department, heretofore called the "Endowment Rank."

The obligations of the members of the said three classes, their rights and the rights of their beneficiaries, are now and have always

been measured by the laws governing the particular class to which each member belongs. A continuation of this policy is hereby declared so long as there are members of more than one class. Without in any way disturbing the status of any member of either the first, second or fourth class, it is hereby declared the purpose of this society to create and establish a new class to be called the fifth class. Except as may be otherwise specifically provided, every and all provisions of these statutes apply alike upon all members of the insurance department without regard to a division of the membership into classes.

378 405. The territory to be occupied by this society shall at all times, except as may be restricted by the board, be co-extensive with the jurisdiction of the Supreme Lodge. The board may, when deemed for the best interests of the society, decline applications for membership from residents, permanent or otherwise, of any country, state, territory or province, or any part thereof, and may, as occasion may require, in the opinion of the board, restrict members from going into or residing in territory infected with disease or subject to great epidemics or hazards.

## Chapter II.

### Board of Control—Composition and Powers of.

406. For the purpose of effecting the orderly conduct of the business of the insurance department of this society, there is hereby created a board of trustees, to be known as the "board of control," which board shall have full charge and complete control of the business and affairs of the insurance department, subject at all times and in all things to the direction of, and to account and report to, the Supreme Lodge Knights of Pythias.

407. The board of control of the insurance department of "The Supreme Lodge Knights of Pythias" shall be composed of the Supreme Chancellor, the Supreme Vice Chancellor and the junior Past Supreme Chancellor, ex officio, and six members, who shall be elected by the Supreme Lodge. Any past grand chancellor of this society in good standing, who shall have taken the Supreme Lodge rank, shall be eligible for membership on the board.

408. The terms of office of the members of the board shall be as follows: For the Supreme Chancellor, the Supreme Vice Chancellor and the retiring junior Past Supreme Chancellor, during their terms as such respectively; and for the elective members, the full period of six years and until their successors are elected and qualified, two members to be elected at each regular convention of the Supreme Lodge; provided, that the term of office of the present members in office at the opening of the Supreme Lodge convention of 1906 shall continue until the expiration of the terms for which they were elected; and provided, further, that at the convention of 1906 there shall be elected three members of the board, two for the term of six years, and one for the term of two years.

409. Before assuming the duties of his office, each member of the

board shall subscribe to an obligation in duplicate, one of which shall be filed with the Supreme Keeper of Records and Seal, and one with the secretary of the board, and shall be copied into a permanent record kept for that purpose in the office of the board, which obligation shall be substantially in words and figures as follows: "I, ———, do solemnly pledge my knightly honor that I will support the constitution and laws of the Supreme Lodge Knights of Pythias, and that I will discharge the duties of a member of the board of control honestly and faithfully and to the best of my ability. So help me God."

410. The board shall meet quarterly, beginning on such days of the months of January, April, July and October, as may be determined by the board or as shall be designated by the president of the insurance department. Special meetings may be called by the president whenever by him deemed necessary, and shall be by him so called upon the written request of any three members. Five members shall constitute a quorum, and no business shall be transacted at any meeting unless a quorum be present. The concurrence of five members present shall be required to take affirmative action. Each member of the board shall have sufficient notice of all meetings of the board to enable him to travel thereto from his place of residence. Unless otherwise provided in the notice, meetings of the board shall be held at the society's head office.

411. The headquarters of the insurance department and the place where its head office shall be maintained for the transaction of its business shall be in the City of Chicago, in the state of Illinois, unless otherwise ordered by the board, upon the written authority of six members of the board.

412. It shall be the duty of the board to attend the Supreme Lodge conventions, and the members thereof shall be privileged to take part in all discussions affecting the insurance department matters. For their services at Supreme Lodge conventions the members of the board shall receive the same compensation as Supreme Representatives; and for their services at the sessions of the board, they shall receive out of the expense funds of the insurance department the sum of ten dollars per day, and the same mileage as Supreme Representatives, per diem and mileage to be computed according to the manner of computing the same for Supreme Representatives; provided, that no member of the board shall draw mileage and per diem both as a member of the Supreme Lodge and of the board for the same journey or day, nor double compensation in any event.

413. The board shall have power to appoint a committee, to be known as the executive committee of the board. It shall consist of at least three, and any member or officer of the board shall be eligible for membership on the executive committee. Such committee shall meet at such times as the board may direct and shall, during the interim of board meetings, act for said board in all matters that may lawfully be submitted to it. It shall only possess administrative powers, such as the examining auditing and passing upon proofs of death, applications for membership and restoration to mem-

bership, awarding of contracts for supplies and printing, and such other matters as may be required of it by the board. In all its acts it shall strictly observe the laws of the society and follow the instructions of the board. A majority of the committee shall constitute a quorum and a concurrence of a majority shall be required to transact business.

(a) The general secretary shall attend all meetings of the executive committee and take and keep accurate minutes of the same, showing all actions taken by said committee. Such minutes shall be written up immediately following each meeting of the committee,

and copies thereof mailed at once to each member of the  
381 board.

(b) All acts of the committee shall be the subject of review by the board at the next meeting thereof. The appointment to and service on the executive committee shall in no wise relieve any officer of the insurance department of any duty or responsibility pertaining to his office. Any member of such committee not an officer shall receive for his services as such committeeman the same compensation paid members of the board, but shall not receive double pay.

(c) The executive committee shall possess no power except as herein granted or as may be expressly granted by the board, and shall in no case assume the duty or power of any officer except in the event of death, resignation or inability of an officer to act, in which event the executive committee may provide for the emergency in such as may seem best to it.

(d) The board shall have the power to appoint such other committees from time to time as occasion may require, and to prescribe their duties.

414. The board shall present at each regular convention of the Supreme Lodge a full and complete written or printed report covering the entire period since the date of its last report to the Supreme Lodge, which report shall contain a complete statement of its official acts and decisions and of the operations of the insurance department, its income and disbursements, and shall contain such other information as will fully advise the members of the Supreme Lodge of the past history, current conditions and future prospects of said insurance department; it being expressly intended that the board shall at least once every two years report to the members of this society all of the business done, the amount of income and sources of same, the amount expended or disbursed, and the purpose of the same, detailed description and history of all investments made and securities and investments on hand, and also the general condition of the insurance department from an actuary standpoint, and a copy of this report shall be forwarded by mail to every member of the Supreme Lodge, so as to reach him at least 10 days before the date fixed for the opening of the ensuing biennial convention.

382 The board shall also report, at such times as the Supreme Lodge may require, upon such other matters as may be required. During the recesses of the Supreme Lodge the board shall make to the Supreme Chancellor reports covering such subjects rela-



tive to the insurance department as he may require. It shall be the duty of the board to present from time to time to the Supreme Lodge recommendations looking to the progress, advantage and perpetuity of the insurance department.

(a) The fiscal year for the insurance department shall begin with the first day of July and end with the last day of June.

415. The board shall have authority to address to any grand or subordinate lodge of this society, or to any officer or member thereof, any communication or circular pertaining to or connected with the insurance department or its business. The same to be received and regarded as an official communication of this society.

416. The board shall deposit or cause to be deposited daily, as received, the funds of the insurance department in such chartered bank or banks as it may deem proper; provided, that the banks in which shall be kept the current funds or open accounts, to be known as the insurance department depository or depositories, shall be designated by the board at the first quarterly meeting after the close of each regular Supreme Lodge convention, or as soon thereafter as the board shall be able to make satisfactory contracts with such depository or depositories. The board shall require each bank selected as a depository to agree in writing not to allow any funds of the insurance department to be withdrawn except by and upon check or warrant adopted and established for such use by the board, with the concurrence of such banks, and then only when signed and countersigned as may be required by resolution of the board.

417. The board shall enforce all provisions of the Supreme constitution and statutes in relation to the insurance department, and, except as otherwise provided, shall have full power and authority to manage, carry on and conduct the business of the insurance department, and shall elect its officers and employ or authorize the employment of all necessary assistants and clerks, prescribe the duties of and fix the compensation of officers, assistants and clerks, and may remove the same at pleasure. The president and general secretary,

383 acting jointly, are authorized to execute such bonds as may be required in proceedings at law or otherwise, to which this society, by reason of any matters growing out of the insurance department, may be a party or interested; provided, however, that any bond exceeding the sum of fifteen thousand dollars, shall be executed by the Supreme Chancellor and the Supreme Keeper of Records and Seal of this society, acting jointly with the president and general secretary aforesaid. It is directed to receive and safely keep the funds of the insurance department and to disburse the same only in strict accord with the authority conferred by this society.

(a) The board shall invest the funds on hand from time to time, when not required to pay the liabilities of the insurance department, nor to be kept on hand in cash for any other purpose, in securities readily convertible into cash, provided such investments shall be limited to government, state, provincial, county and municipal bonds, or bonds of any township, park or school district, having taxing power; provided, that such bonds shall be a direct obligation on all the taxable property within such municipality or district and

the net indebtedness of such municipality or district shall not exceed the statutory provisions governing same, or, in absence of a statute, five per centum of the value of all taxable property therein, according to the last valuation for taxation preceeding the issuance of such bonds; or in first mortgages, or first mortgage bonds, or guaranteed mortgage bonds, upon improved real estate, provided, that the total bond or mortgage issue shall not exceed fifty per centum of the actual cash value thereof, exclusive of improvements at the time of making the loan.

(b) No investment of the funds of the society shall be made until such investment is authorized in writing by six members of the board. Such authorization shall describe with particularity the nature, character and amount of securities required in the making of such proposed investment, and such authorizations shall be kept as a permanent record in the office of said board. The board, upon the written authority of six members thereof, may sell and dispose of any property, bonds or other securities on hand or hereafter acquired, when in its opinion it is desirable to do so, and may reinvest the funds so received in accordance with the provisions thereof.

484 (c) It is authorized to make special assessments upon all members of any class in the insurance department, when in its opinion this course is necessary to be taken in order that the purposes of the insurance department may be carried out. It shall make quarterly reports to members of the insurance department, giving the financial condition and such other information concerning the insurance department as may be deemed necessary, copies of such report to be sent also to each section officer and each officer and member of the Supreme Lodge. The board shall also from time to time, and as may be deemed desirable by it, prepare, publish and distribute among the members of this society such documents or literature as will advance the insurance department, and inform the members of this society of its work and condition.

(d) It shall be authorized to issue each month a publication in the interest of the insurance department, containing statements as to the finances and membership, official notices and information and such other items of interest as may be deemed advisable by the board. Such notices as may appear in said publication shall be regarded as official and binding upon all members of the insurance department of this society, provided that a copy of the publication shall be mailed to every member affected by such official notice. The board shall have authority to consolidate with this publication the quarterly report referred to in this section.

418. The board with the written concurrence of not less than six of its members, is authorized to use any funds of the insurance department that may be in its possession or under its control, or to sell, transfer, pledge or otherwise dispose of any property, real or personal, or securities held in trust by it for the insurance department, and use the proceeds derived therefrom for the protection of the rights, interests and investments of the insurance department, whether the same be in real estate or otherwise.

419. The board, with the concurrence of six members thereof in writing, is hereby authorized, empowered and directed, whenever in its judgment it may become necessary or be deemed advisable  
385 in order to protect any investment of the funds of the insurance department, to take such action as it may deem be in the premises, and for that purpose to purchase any real estate in which the funds of the insurance department may be invested, and to use so much of the funds or securities of said insurance department as may be necessary to pay the balance therefor, over and above the amount already invested therein; and, in case there should not be sufficient funds on hand or available for that purpose, to incur debt to the amount and extent necessary to make said purchase and execute evidences of indebtedness in the name of the Supreme Lodge Knights of Pythias, the same to be signed by the Supreme Chancellor, attested by the Supreme Keeper of Records and Seal and sealed with the Great Seal of the Supreme Lodge.

420. Whenever the board shall, in accordance with the powers herein granted it, purchase any real estate, securities or credits, the title to which shall be in writing, the title thereto shall be taken in the name of the Supreme Lodge Knights of Pythias, and whenever said board shall have expressed its desire in writing, as herein provided, that in its opinion it is necessary, advisable or desirable to dispose of by sale, mortgage, pledge, deed of trust or otherwise any real estate, securities or other property acquired under the provisions of this act, the Supreme Chancellor shall be and he is hereto authorized, and empowered to convey title thereto to the purchaser, and for that purpose to make, execute and deliver any and all instruments or writings in the name of the Supreme Lodge Knights of Pythias, or otherwise, that may be necessary for the purpose of conveying, transferring, assigning or disposing of any such real estate, securities or other property, the same to be attested by the signature of the Supreme Keeper of Records and Seal under the Great Seal of the Supreme Lodge.

(a) Nothing herein shall be construed to authorize the board to make any future investments of the funds of the insurance department, not in connection with or for the protection of the investments of said fund, other than in the kind and class of securities mentioned in section 417 of this chapter.

386 (b) Nothing herein shall be construed to require that bonds or other securities now owned or hereafter acquired by the insurance department which are payable to bearer shall be registered in the name of the Supreme Lodge, nor to require action on the part of the Supreme Chancellor and Supreme Keeper of Records and Seal in the sale and transfer of securities, except where title is to be conveyed by documents under seal.

421. In advance of the quarterly meetings of the board, the Supreme Chancellor is authorized to appoint a committee of one or more members of the board to audit the books and accounts of the officers of the board, to examine into the conditions, securities and business of the insurance department, and to report thereon. Such committee shall receive the same mileage and per diem for such

services it may render as is paid members of the board for attendance upon board meetings, provided that no member of such committee shall draw double mileage or per diem by virtue thereof.

422. The board is hereby granted full power and authority to, from time to time and as occasion may require, adopt and publish such rules and make such regulations as it may see fit or deem necessary to carry out the full intent and purposes of the authority granted to it by the laws of this society, and to fully effectuate the purposes for which the insurance department was created and now exists; such rules and regulations, when so adopted and published, and until repealed by the board or by this society; shall have all the force of laws enacted by this society, so far as they pertain to the business of the insurance department and the rights, duties and obligations of the members of this society.

(a) It is hereby declared to be the purpose of the Supreme Lodge to invest said board with all power and authority which is usually possessed by boards of trustees and directors of incorporated bodies, limited only by the express provisions of these statutes.

423. All of the funds of the insurance department are hereby recognized to be trust funds, and same are to be received, held, controlled and disbursed by the board in full appreciation of their trust fund character.

387 The board shall provide suitable, safe and secure safes or places of deposit in which the securities and evidences of investments of the funds of the insurance department shall be kept, and the board shall at all times take such other means of caring for and preserving the funds, properties and securities of the insurance department as will insure same against depreciation and loss.

424. The board is hereby authorized to issue certificates of membership, commonly known as benefit certificates, to prescribe the form of same and to make all necessary or desirable contracts in respect thereto, and to provide for the payment of same.

425. The board is hereby authorized to annul any certificate of membership, when, upon investigation, it finds that such certificate has been procured by misrepresentation or fraud, and also whenever a member becomes addicted to habits or vices in any form, so that, in the opinion of the board, his life or natural expectancy is or may be thereby shortened, or whenever the board finds that such member has already impaired his health or shortened his life expectancy, provided that, in all cases in which certificates are annulled for causes stated in this section, the board shall cause to be refunded to the member such sum as may be found to be equitably due him in accordance with the further provisions of these statutes, and such rules and regulations as the board may adopt from time to time; provided, however, that no certificate shall be cancelled except upon thirty days' written notice to the member, he being given an opportunity to be heard in opposition to such cancellation. In all such cases, the member may waive the time, notice and trial, and plead immediately to the charges preferred. The failure of the board to act in any case under the authority herein granted, shall not preclude or estop this

society from asserting any defense that it might have in the absence of this section.

426. The board shall hear and determine all appeals from the sections and members of the insurance department, and its decisions shall be final, unless and until reversed by the Supreme Tribunal, as hereinafter provided.

388 427. Members and sections may prosecute appeals to the Supreme Tribunal from decisions of the board affecting their rights. Such appeals must be taken within ninety days from the date of the service of the notice of the decision complained of upon the aggrieved party. The appellant shall, within that time, serve personally upon the secretary of the board and file with the recorder of the Supreme Tribunal a petition setting forth his cause of complaint, and shall attach thereto as exhibits all papers relating to the cause of complaint which are in his possession or control. The board shall answer said complaint within thirty days after the same is served as above, and shall attach to its answer, as exhibits, such papers relating to its defense as it deems proper and all papers in the case which may be called for by the petition of the appellant. Thereafter all proceedings shall be in accordance with the Supreme constitution and Supreme statutes and rules of the Supreme Tribunal in cases in which the Supreme Tribunal has original jurisdiction.

428. It shall be the duty of each member of the board and of all officers and employees of the insurance department and of the several sections throughout the Supreme domain, to deliver and turn over to their respective successors in office, immediately upon their election or appointment and qualification, all funds, property, books, papers, documents or other matters or things pertaining or relating to or connected with the business of the insurance department, board or the section.

429. The board shall prescribe the form of all applications, certificates of membership or other forms, as well as the books, blanks and notices, unless otherwise provided by these statutes, and shall supply and furnish all printed and other material and supplies that may be needed in conducting the business of the insurance department, and cause to be copyrighted such of the blanks, notices, forms and books used by the society, the sections and officers thereof, as it may deem expedient.

430. The board shall have power to make, pass and enforce any order, rule or regulation to cover any exigency or case not provided for in the statutes of the society or by reason of inaction of the Supreme Lodge, provided, however, that it shall not possess the power to repeal, add to, take from nor change any law of the so-  
389 ciety. The powers that are herein granted to the board are not to be regarded as exhausted by being once exercised, but are to continue until such powers are withdrawn by this society.

431. The board shall have power to reinstate and restore any membership certificate suspended, forfeited or cancelled by mistake or otherwise, or where, in the opinion of the board, such reinstatement or restoration is just and will conserve the best interests of the insurance department.

432. Every office in the insurance department is hereby declared an office of trust, and every officer a trustee, and every member of the board and every officer of the Insurance department shall be held to strict accountability in the exercise of authority and in the performance of every duty.

433. At the meetings of the board, the following shall be the presiding officers in the order named: The Supreme Chancellor, and in his absence or upon his vacating the chair, the Supreme Vice Chancellor, or in the absence of both of said officers or upon their vacating the chair, the Junior Past Supreme Chancellor. None of said officers named in this section shall receive any compensation from the insurance department, except that to which they may be entitled for mileage and per diem, as members of the board or members of the executive committee of the board.

434. The board shall have the power to make, adopt and use a seal for the insurance department, the same to be of such design and size as the board may determine.

### Chapter III.

#### Officers and Bureaus.

435. The officers of the insurance department shall be elected by the board at the first quarterly meeting after each regular convention of the Supreme Lodge, unless the board shall, for good cause, provide otherwise, or unless it shall adjourn such election to a later date. Such officers shall be as follows: a president, a general secretary, a general counsel and a medical examiner-in-chief. The board  
390 may select such additional assistants as may be deemed necessary from time to time. The board shall have authority to prescribe the duties and fix the compensation of all officers and employees.

436. The terms of the officers of the insurance department shall be until the time for the election of officers at the meeting of the board held for that purpose after the next regular convention of the Supreme Lodge, except that any officer may, at the pleasure of the board, be removed, and, in the event of a vacancy ad interim of the board meetings, either by resignation, death or otherwise, such vacancy shall be filled, until the next regular meeting of the board, by appointment of the Supreme Chancellor.

437. Each officer, before entering upon the discharge of the duties of his position, shall take and subscribe the following obligation:

"I, ———, do solemnly pledge my knightly honor that I will support the constitution and laws of the Supreme Lodge Knights of Pythias, and that I will discharge the duties of — (naming position) honestly and faithfully and to the best of my ability. So help me God." This obligation shall be in writing and in duplicate, one of which shall be filed with the Supreme Chancellor, and one with the secretary of the board, and shall, by the latter officer, be copied into a permanent record kept for that purpose in the office of the board.

438. In the payment of the liabilities of the insurance department, the general secretary shall draw checks on the proper bank account, therefor, after the claim made has been audited and approved as the board may direct; and before any check shall be valid for payment at the bank on which it is drawn, the same shall be countersigned in writing upon its face by such officer as the board may, by resolution, direct.

439. The board shall have full power and authority to organize the members thereof and officers into such bureaus as it may deem for the best interests of the insurance department, with full power to define the duties of the respective officers and the members of the different bureaus that may be created under this power, and to require of any officer, employee or member of any bureau a bond or bonds for the faithful performance of his duties, conditioned as it may determine.

391

## Chapter IV.

## Sections of the Insurance Department.

440. Subordinate or local branches of the insurance department shall be termed "sections," into which the membership of the insurance department shall be grouped. Each member of the insurance department, in addition to maintaining his membership in a subordinate lodge, shall maintain membership in a section of the insurance department.

441. Petitions for the organization of sections of the insurance department must be made in the form provided by the board, and shall be forwarded to the board, accompanied by the individual applications of the petitioners, a membership fee of fifty cents for each \$500. benefit applied for, and the first monthly payment of each applicant, the payment to be based upon the occupation and age at nearest birthday to date of application, and in accordance with the table of rates applicable and in force at date of the petition in the class to which the applicant desires admission, and upon the particular plan selected.

442. Each applicant, after entering his name upon the petition, shall make a regular application for membership in the insurance department, upon a form provided by the board, and be examined in accordance with the prescribed "rules for medical examiners," by a physician selected by the board, or under its direction, who shall prepare, sign and forward to the board, or as it may direct, the application, together with his report thereon in the form prescribed. Said application shall form the basis of the contract, and be a part of the contract of membership in the insurance department if said application is accepted.

443. Sections shall exist by virtue of warrants of authority issued by the board or under its direction, which shall be in the form prescribed by the board.

444. Sections shall not be organized until the applications of at least five petitioners shall have been approved by the medical ex-



aminer-in-chief and accepted by the board or its executive committee.

(a) In the organization of a new section, the section  
392 officers (president, vice-president and secretary) shall be elected from the members, subject to the approval of the board or executive committee, and their names noted on the petition before the same is forwarded to the board. When the required number of applicants for organization is accepted, the board shall cause to be issued the warrant of authority and forward it, together with the certificates of membership, books, seal and all necessary supplies, to the section secretary; whereupon the section shall be deemed duly organized.

(b) The board or the executive committee shall have the power summarily to remove officers of sections whose further continuance in their respective offices, in the judgment of the board or executive committee, is deemed injurious to the interests of the insurance department; and shall also have power to appoint their successors to hold office until the next regular meeting of the section held for the election of officers.

445. Each section shall have an official seal of uniform design, numbered to correspond with the number of the section, and which number shall be the legal name of the section, and which seal shall be furnished by the board, and shall be affixed to all official documents of the section.

446. In cities or localities where two or more sections exist, the board or executive committee may, at its discretion, consolidate said sections into one or more general sections.

447. Whenever a section is suspended or dissolved, or for any reason its warrant of authority is taken up or cancelled or suspended, the members of such section shall be transferred to some other section by the board or executive committee, and notice of that fact promptly given to the members transferred and to the officers of the section to which the transfer is made. The action of the board or executive committee in the premises shall be binding until reversed or set aside by competent authority.

448. The property, records and supplies of a section whose warrant  
393 of authority is surrendered or cancelled shall immediately revert to the board and become its property, and be delivered to it by whomsoever has possession of same.

449. Each section is authorized to make by-laws for its own government not inconsistent with the laws of the Supreme Lodge or the rules of the board. Before said by-laws, or any of them, shall become operative, they shall first be submitted to and approved by the president and general counsel of the board.

450. The full compensation of section secretaries for their services and to cover their expenses in the transaction of the business of their office shall be five per cent of the amount collected and remitted by them to the board. Payment of such compensation shall be made to secretaries by the board at least once every three months, out of funds collected for expense purposes. No part of the collection made by secretaries shall be deducted or withheld by them.

451. Sections and section officers shall not have power to levy or collect any tax, dues or charge upon the membership of the insurance department.

452. The secretaries of sections shall forward to the board the monthly payments and assessments collected, immediately after the twentieth day of each and every month. If such payments and assessments are not paid to the board on or before the last day of the same month, the section so failing to pay shall stand suspended from membership in the insurance department and its warrant of authority shall be ipso facto suspended. Notice of such suspension shall be forthwith sent by mail by the general secretary, addressed to their last known postoffice address in the office of the board, to the president, the secretary and to each member of such section; provided, that such notice shall not be a part of the process of suspension; provided, further, that any surviving members of a section, not less than three, whose warrant has been suspended, shall regain

all rights it had as a section, and each such member thereof  
394 his full rights and privileges held previous to such suspension and forfeiture, if within thirty days from the suspension of warrant, said section shall pay to the board all monthly payments and assessments unpaid and accrued upon said members; provided, that the member who has paid his monthly dues and assessments as required by law shall not be affected by the suspension of this section, and shall be deemed in good standing in the insurance department; and until his transfer to another section, he shall pay his dues and assessments directly to the board of control.

453. Less than three members of a section whose warrant has been so suspended may, upon payment to the board, within thirty days from the suspension of the warrant, of all accrued monthly payments or assessments, regain membership and all rights and privileges attached thereto, and shall thereupon be transferred by the board to some other section.

454. When the membership of a section is reduced to less than three, the board, upon the request of the members, or any of them, may issue to them clearance cards, signed by the president and attested by the general secretary, subject to the requirements of these statutes, and thenceforth the holder's name shall be retained on the books of the board, to which all monthly payments and assessments shall be paid during the life of the card. Said card shall be in the form prescribed by the board. Such card may be deposited, at any time within twelve months from its date, with the secretary of any section, upon conditions named therein, and the name of the holder shall thereupon be entered on the roll of membership in said section, and notice of such fact sent to the board by the section secretary. But if such card be not so deposited within the period above specified, it shall be returned to the board by the holder thereof, and upon presenting evidence that he is still a member in good standing of a subordinate lodge of Knights of Pythias, and if it shall further appear that he has made all payments and paid all assessments required of him in the insurance department, a new card will be issued.

395 (a) Members holding clearance cards shall be subject to the same requirements with reference to the making of monthly payments and paying assessments the same as members of sections, and likewise subject to all the liabilities and penalties of suspension and forfeiture for failure to comply with such requirements.

455. Any member of a section desiring to transfer his membership to another section shall be entitled to receive a clearance card by paying all monthly payments and assessments and other charges justly appearing against him on the books of the section; blank clearance cards to be furnished by the board to sections for such price as the board may determine and must be countersigned by the president and secretary of the sections, certifying to the good standing of the holder in the section. Said card shall be in the form prescribed by the board or the executive committee.

456. Members holding clearance cards must continue to pay to the secretary of the section granting the card all monthly payments and assessments until such card is deposited in another section, which must be done within twelve months from date of issue, and for the purpose of suspension and forfeiture such members holding a clearance card shall be treated as members of the section issuing the card.

457. The secretary of the section granting a clearance card shall continue to collect from the member all monthly payments, assessments or dues until he receives notice that the card is deposited, when he shall at once notify the board, giving the number of the section in which it has been deposited, and stating the last monthly payment paid to him.

458. When a clearance card is presented to a section for deposit, it must be accompanied with evidence that the holder is in good standing in a subordinate lodge and in the insurance department, and when a member is thus admitted to a section, due notice thereof shall be sent to the secretary of the section granting such card, and the clearance card, with notice of the date of deposit, also the date and to whom the last payment was paid, shall be forwarded to the board. If at the end of twelve months such card has not been

396 deposited in some other section, membership shall continue in the section granting the card, and the clearance card becomes thereby null and void.

459. Secretaries of sections are responsible to the board for all moneys collected from members for monthly payments and assessments not paid over to the board within the time and manner prescribed by the statutes and the rules of the board governing the insurance department.

460. All section secretaries, before entering upon their duties, shall execute such bond as the board or the executive committee may require, which bond shall obligate the secretary to pay to the board all moneys from members of their section coming to their hands, and to deliver all property to the board in accordance with the laws of the Supreme Lodge and the rules of the board.

461. No officer of a section and no officer of the insurance department shall possess or have the power to waive any of the re-

quirements or laws of the Supreme Lodge, nor shall they by any course of dealing or conduct bind the Supreme Lodge or estop the Supreme Lodge from insisting upon the strict observance and enforcement of all laws. No member of the insurance department shall gain any right by reason of the misconduct, omission or malfeasance of an officer. The right of the Supreme Lodge at all times, as the representative of the aggregate membership in the insurance department, shall be superior to the rights of individual members claiming rights by reason of some course of dealing or conduct of an officer in violation of the laws of the Supreme Lodge.

### Chapter V.

#### Section Names, Meetings, Quorum, Supplies, etc.

462. Each section shall be known as Section No. — of the Supreme Lodge Knights of Pythias, insurance department.

463. Meetings of sections for the transaction of official business shall be held at such time and place as may be fixed by the by-laws of such section. A meeting shall also be held in December of each year for the election of a president, *vice*-president and secretary, who,

397 together with the section medical examiner or examiners, shall constitute the officers of a section, and who shall serve for the ensuing year and until their successors are elected and qualified. Such officers must be members of the section; provided that section medical examiners may hold office in more than one section. The medical examiners shall be competent, registered and practising physicians. Wherever and whenever it is deemed advisable, medical examiners may be appointed for sections, even though they are not members of a subordinate lodge.

464. Special meetings of sections, when necessary may be held upon the call of the president, or at the request of two members of the section, but in case of all special meetings, before the same shall be valid, notice of such meeting, giving the purpose of same, shall be given to all members at least three days before such special meeting. Three members shall constitute a quorum of a section meeting.

465. The supplies for use of a new section, consisting of the seal and necessary books, blanks, etc., together with all subsequent supplies required by sections, and the preliminary blanks for organization, shall be furnished by the board upon application, free of charge.

466. The president shall preside at all meetings of the section. He shall see that the laws of the insurance department and rules and requirements of the board are complied with by the officers and members of the section.

467. The vice president shall discharge all the duties of the president in case of his absence or inability to perform any specific work required of him by the laws of the Supreme Lodge or rules of the board. In the absence of both president and vice president, any member may be called to preside.

468. The secretary shall receive all applications for membership, made out in proper form, and forward them, accompanied by the

membership fee and first monthly payment, to the board. When notified of the rejection of an applicant, the secretary shall promptly return all moneys paid.

398 (a) The secretary shall keep a faithful record of the business of the section transacted in the meetings or by the authorized officers during the recess; also a financial account with each member of the section. He shall keep a correct record of the post-office address and occupation of each member and record changes thereof, of which he has notice. He shall notify the board immediately of any changes of address or of occupation of members. He shall use the books, blanks and forms furnished by the board, and perform all other duties required of him by the laws of the insurance department or by the rules of the board.

(b) Before entering on the discharge of his duties, the section shall require the secretary, and he is hereby required, to make and execute a bond to the Supreme Lodge Knights of Pythias, to secure the due and Prompt payment to said board of all membership fees, monthly payments and assessments collected by him as secretary from the members of said section, and to turn over to his successor or to the board, upon demand, the records and property of his office, and for the faithful performance of all duties of his office, the penalty of which bond shall not be less than the maximum amount of three monthly payments collected from all the members of said section.

(c) No person shall be the agent of the Supreme Lodge for the collection of monthly payments or assessments, or authorized to receive any money on account thereof, until he shall have executed and delivered a bond as required by this section, and the same shall have been approved and accepted by the board.

469. In case of the death, resignation or removal of any officer, the section shall immediately fill the vacancy for the unexpired term. Upon the failure or refusal of the section to fill such a vacancy, the board or executive committee may make such appointments as may be by it deemed proper.

470. The section medical examiners shall be appointed by the board, and shall examine applicants for membership in accordance with the prescribed form and instructions given on the application blank, and make report upon all examinations upon the  
399 blanks furnished and, whenever deemed necessary, make special report to the board for reference to the medical examiner-in-chief on any examination made. He shall forward to the board all applications in which the risk is declined by him, and make full report whenever required so to do by the board or the medical examiner-in-chief.

471. No section officer, except the secretary and medical examiner, shall receive any compensation for his services; and they shall receive none other than that prescribed in these laws or authorized by the board. The board shall not be liable for the expenses of any officer in conducting the business of his office.

472. Remittances of funds to the board by the section secretary shall be made only by bank exchange, post office or express money order or registered mail, but in no event shall the board be charged

with any sum remitted to it until same has reached the board, and in the event that any bank exchange or money order sent to the board is not paid on presentation by the person upon whom it is drawn, the secretary remitting same shall immediately pay the amount thereof, with such expenses as may have been incurred by the board.

### Chapter VI.

#### Classes, Membership, Members' Obligations and Rights.

473. In conformity with the policy upon which the insurance department was organized and established and has been conducted, the membership thereof shall be continued in classes, and each of the first, second and fourth classes, in which all the members of the insurance department at the date of the passage of these statutes are now, shall be maintained so long as there are any members in said classes, respectively.

474. The first class shall be maintained as organized and as it exists on the date of the passage of this law, so long as there are any members in said class. All members of said first class shall continue therein, subject to the same obligations and possess the same rights and be entitled to the same benefits as they now are, without change, enlargement or diminution, except as the Supreme Lodge shall otherwise provide; and all laws, rules, forms and business details

400 heretofore enacted by the Supreme Lodge for the government of the first class, and as the same were in force on the first day of January, A. D. 1886, shall, subject to repeal, change or modification hereafter, remain in full force and effect so long as there are any members in said class; and upon the death or retirement of the last member of said class, and the discharge of all the obligations of the insurance department to said first class, the board shall report such fact to the Supreme Lodge, and said first class shall thereupon cease to exist.

475. The second class shall be maintained as organized and as it exists on the date of the passage of this law, so long as there are any members in said class. All members of said second class shall continue therein subject to the same obligations and possess the same rights and be entitled to the same benefits as they now are, without change, enlargement or diminution, except as the Supreme Lodge shall otherwise provide; and all laws, rules, forms and business details heretofore enacted by the Supreme Lodge for the government of the second class, and as the same were in force on the first day of January, A. D. 1886, shall, subject to repeal, change or modification hereafter, remain in full force and effect so long as there are any members in said class; and upon the death or retirement of the last member of said class, and the discharge of all the obligations of the insurance department to said second class, the board shall report such fact to the Supreme Lodge, and said second class shall thereupon cease to exist.

476. There no longer being any members in the third class, and all of the obligations of the insurance department in said class having

been fully discharged to said third class, it is hereby declared that upon the passage of this law the former third class of the insurance department has ceased to exist.

477. The fourth class shall be maintained as organized and as it exists on the date of the passage of this law, so long as there  
401 are any members in said class. All members of said fourth class shall continue therein, subject to the same obligations and shall possess the same privileges and rights and be entitled to the same benefits as they now are, without change, enlargement or diminution, except as the Supreme Lodge shall otherwise in this code of laws specifically provide; and all laws, rules, forms and regulations heretofore enacted by the Supreme Lodge for the government of the fourth class, and as the same were in force on the first day of October, A. D. 1906, except as the same may be repealed, added to or changed by this code of laws, and subject further to repeal, adding to or change hereafter, shall remain in full force and effect so long as there are any members in said class.

478. It is hereby declared that all provisions of these statutes relating to the insurance department or membership therein shall apply to and be binding upon all members of the insurance department at the time of the enactment of these statutes; and their contracts shall be governed and controlled thereby, subject to the further changes authorized in this section. Provided, that in so far as this section is or may be now in conflict with section 482, Supreme statutes, as amended at the convention of 1910, and with other laws at said convention enacted, this section is hereby repealed, but that except as to such conflict it shall remain in full force as though no amendments to law or laws had been enacted at said convention.

479. In the operations of the insurance department, the membership of each class shall be kept separated on the records from the membership of every other class. The books and records of the board shall show at all times the individual and total membership of each class, and, to that extent, each class shall be treated as a separate and distinct society.

480. All of the moneys, bonds, mortgages, notes, credits, securities and properties of every kind of the insurance department on hand at the close of business on the 31st day of December, A. D. 1906, not belonging to the first or second classes, composing the mortuary fund of the fourth class, are hereby declared to be a trust  
402 fund—said fund and its accretions, or so much thereof as may be necessary, to be used to assist in meeting the obligations of the fourth class, and, shall, together with subsequent and future contributions of the members of the fourth class for mortuary purposes, and the accretions thereto, constitute the mortuary fund of the fourth class.

481. The board is hereby authorized to issue benefit certificates in the fourth class and to provide for the payment of same, said certificates to be in sums of \$500, \$1,000, \$2,000 and \$3,000, respectively, and to be issued only upon approved applications from persons eligible to membership in the fourth class of the insurance department. The form of application for membership in the fourth class



and benefit certificate shall be prescribed by the board, and may be changed from time to time by the board as it deems wise. Every condition of the contract made in the fourth class shall be written or printed in or upon the benefit certificate, except those contained in the application, medical examination and in the laws in force at date of the certificate, and the laws that may be subsequently enacted by the Supreme Lodge.

482. To the end that every certificate in the fourth class of the insurance department shall upon maturity be paid in full according to the tenor thereof, the Supreme Lodge enacts and declares that:

(a) Each applicant for membership in the fourth class in the insurance department shall, upon completion of his application for transmission to the board, pay to the secretary of the section or other duly authorized representative of said board, a membership fee of fifty cents for each \$500 of benefit applied for, and shall pay in accordance with his age, occupation and the amount of benefit applied for a monthly payment as provided in the table herein, and if accepted, such member shall continue to pay the same amount (less the membership fee) each month thereafter in accordance with the laws governing the insurance department, unless otherwise provided for by enactments of the Supreme Lodge.

(b) Every member of the fourth class of the insurance department at the time when this statute takes effect and who continues his membership until December 31, 1910, shall pay a monthly payment for each month thereafter, beginning with the month of January, A. D. 1911, monthly payments in accordance with his attained age and occupation and the amount of benefit provided for in his certificate, on January 1, A. D. 1911, as fixed by the table herein, unless and until otherwise provided by enactments of the Supreme Lodge.

(c) The following table represents gross rates covering the amounts of both mortuary and expense elements and are on one thousand dollars of insurance. Payments on certificates in the sum of \$500 shall be one-half of the following rates except where the last figure of the rate is 5. In cases of this kind the rates shall be one-half the scheduled rates, plus 2½ cents. Rates on \$2,000, \$3,000, \$4,000 and \$5,000 of insurance shall be 2, 3, 4 and 5 times the scheduled rates respectively.

(d) In the case of members following occupations or employments graded as hazardous or extra hazardous, they shall pay in addition to the amount required under the table, the amount required by reason of such grading. The first column gives the age applicable in the case of the new member to his age at nearest birthday at date of admission, and to the present member who continues his membership until said January 1, A. D. 1911, his attained age on said date. The second column gives the amount of each monthly payment applicable to each respective age.

*Table of Monthly Payments per \$1,000.*

Age.	Amount.	Age.	Amount.	Age.	Amount.	Age.	Amount.
21...	\$1.40	39....	\$2.25	57....	\$4.65	74....	\$11.60
22...	1.45	40....	2.30	58....	4.90	75....	12.35
23...	1.50	41....	2.40	59....	5.15	76....	13.15
24...	1.50	42....	2.50	60....	5.40	77....	14.05
25...	1.55	43....	2.60	61....	5.65	78....	15.00
26...	1.60	44....	2.70	62....	5.95	79....	16.10
27...	1.60	45....	2.80	63....	6.25	80....	17.30
28...	1.70	46....	2.90	64....	6.60	81....	18.65
29...	1.70	47....	3.00	65....	6.95	82....	20.15
30...	1.75	48....	3.15	66....	7.35	83....	21.85
31...	1.80	49....	3.30	67....	7.75	84....	23.80
32...	1.85	50....	3.45	68....	8.20	85....	26.10
33...	1.90	51....	3.60	69....	8.65	86....	28.80
34...	1.95	52....	3.75	70....	9.15	87....	31.90
35...	2.00	53....	3.90	71....	9.70	88....	35.50
36...	2.05	54....	4.10	72....	10.30	89....	39.65
37...	2.10	55....	4.25	73....	10.95	90....	44.60
38...	2.15	56....	4.45				

(c) The amounts received under the above table shall be divided into two separate and distinct funds. Ninety per centum of the receipts from payments under the above table shall be paid into and be known as the mortuary fund of the fourth class, and shall be used exclusively in the payment of claims incurred under certificates of membership, whether by death or otherwise, in said fourth class, except as may be otherwise provided for in section 532 Supreme statutes, and ten per centum of the receipts from payments under said table, together with such other sums as may be provided for in said section 532 Supreme statutes, shall be paid into the expense fund of the insurance department.

(f) The board is empowered and directed to prepare and promulgate as speedily as possible a table of monthly payments providing for insurance of five-year and ten-year periods, respectively, using the table of rates hereinbefore provided for as a basis for the said tables for said term insurance, and to grant to the members of said fourth class the privilege of surrendering their present certificates and accepting in lieu thereof certificates in either of the said five-year or ten-year term plans herein provided.

(g) The board is hereby empowered and directed to prepare and promulgate as speedily as possible a table of rates based upon and using the above and foregoing table set out in paragraph "d" as the standard of measurement, making it applicable to each present member of the fourth class and who may continue his membership to said January 1, 1911, so as to give to each said member insurance at the rate he is now paying or may be paying for the month of December, 1910, for such period of time as said rate, providing

for one payment each month, will continue: The purpose of this provision being to give to said members the option of continuing at the rates that they are now paying for such a period of time as said rates will give them protection, using the standard of payments provided for in paragraph "d" hereof as the basis for determining the cost of the insurance.

(h) The board is hereby empowered and directed to as speedily as possible prepare and promulgate a table of rates using the said table set out in paragraph "d" hereof as the basis and standard of measurement, so as to offer to the members of said fourth class who may continue their membership to January 1, 1911, insurance thereafter by scaling their present certificates down to such sum as the rates that they are or may be paying for the month of December, 1910, will provide insurance for the whole period of life.

(i) The board is hereby empowered and directed to as speedily as possible prepare and promulgate a table or plan using the table of rates in paragraph "d" as a standard of measurement, whereby after the first day of January, 1911, members of the fourth class who may desire to do so may continue making the monthly payments at the same rate as they pay for the month of December, 1910, and have charged against their certificate as a lien thereon, and the amount thereof to be deducted as the maturity of their certificate from any sum that may be due thereon, the then value as of January 1, 1911, and the additions down to the time of maturity of the deficiency so found to be due upon each members' contract respectively, by reason of the payment of an insufficient rate under the tables now and heretofore in force in said fourth class, using the said table in said paragraph "d" hereof, as aforesaid, for the ascertainment of the amount of said deficiency.

(j) The board is hereby empowered and directed to make, promulgate and enforce rules and regulations, giving to all members of the fourth class from and after January 1, 1911, who may satisfy the board that they are unable to pay in cash the full amount of each monthly payment as provided for according to the table of rates in this section set out and as herein provided, the privilege of making a payment in cash of such a portion of the monthly rate due from them as is equal to that portion of their rate required for current mortality and expense purposes, allowing the balance of said monthly rates to be charged against their certificates as a lien thereon, which, together with five per centum per annum, as interest, shall be due and payable from them at their pleasure, and if not paid during their lifetime, shall be deducted from the amount due upon their respective certificates.

406 (k) The board is hereby empowered and directed to make, promulgate and enforce all necessary rules providing for the transfer of any present member of the fourth class who may desire to so transfer his insurance, or any portion thereof, to the fifth class, such transfer to be made at any time without expense to him and without medical examination.

(l) The board is hereby empowered and directed to as speedily as possible prepare, promulgate and enforce rules and regulations for granting to all members of the fourth class from and after January 1, 1911, benefits to be paid to said members in the case of sickness, temporary or permanent physical disability, either as the result of disease, accident or old age, provided that the period of life at age of payment of physical disability benefits on account of old age commences shall not be under seventy years (unless a less age than seventy years may be authorized by the statute law of the various states, in which event said less age may be substituted for age seventy), said benefits herein provided for to be deducted from the face of the certificate at maturity from any sum that may be due thereunder or otherwise as said board may determine, and to the end that the said members shall have the full benefit of the provisions of this paragraph, the board is empowered to investigate all applications for benefit fully, and conclusively determine the right of each member applying for benefit to same and the amount of same, and to make all needful agreements with said member with respect to such payments as may be made hereunder, and all payments made hereunder to be paid out of the mortuary fund of the fourth class.

(m) The board is directed to as speedily as possible communicate with all the members of the fourth class whose address it may have or be able to obtain, advising them of the action of the Supreme Lodge, as set out in this section, and giving to them the various options provided for herein, and advising them that on said January 1, 1911, of the applicability to them of the table of monthly payments set out in paragraph "d" hereof, and that their payments thereafter for each month will be in accordance therewith, 407 subject, however, to their acceptance and election in writing and adoption by them of some one of the plans and options provided for by the several paragraphs hereof, and upon the failure of any member to so elect and adopt some one of the plans and options, his payments from and after January 1, 1911, shall be made as provided for in said paragraph "d," and any member of the fourth class who shall fail to pay when due said monthly payments shall thereby ipso facto cease to be a member, and his certificate, with all rights thereunder in said fourth class, shall thereby terminate, subject to the provisions of the laws with reference to reinstatement.

(n) The board shall in addition to the duties required of under section 479, Supreme Statutes, make an accounting and valuation in the fourth class at the close of business on the 31st day of December of each year, for the purpose of ascertaining the cost of mortality and expense, and making provision for the maturity of said contracts. If such accounting and valuation shall disclose a surplus after providing for mortality, expense and said future requirements equal to or exceeding one or more monthly payments from all members of said fourth class who have been members for one full year or more, then such surplus shall be distributed to said

members entitled to participate therein as herein provided, by crediting one or more monthly payments as the case may be, within three months after December 31st of the year for which the accounting and valuation is had, and any surplus not equal to the aggregate monthly payments of those entitled to participate in said accounting and valuation shall be retained by the board and disposed of in the next annual accounting and valuation; that the said distribution shall be on the monthly basis so that the waiving of monthly assessments shall apply at the end of the certificate year instead of the calendar year, and in the making of said accounting the board shall take into consideration the requirements of the expense fund as is provided for with respect to the fifth class in section 522, Supreme statutes, and shall furnish to members of the fourth class the statement of accounting applicable to them as is provided for to members of the fifth class in section 523, Supreme statutes.

408 (o) It is hereby declared to be the purpose and intend of the Supreme Lodge to invest the said board with every requisite power and all needful authority to carry into full effect the purposes of this section, and except the power to repeal or change any provision of this section, to do everything in respect thereto that the Supreme Lodge itself might or could do.

(p) It is hereby further provided that if it shall, at the instance of any member or number of members be determined in any proceeding of law or in equity in any state, that the provisions of this section, as amended, do not apply or cannot be enforced against the members residing in such state, then it is expressly declared that as to such members said section 482, Supreme Statutes, as it exists before the adoption of this amendment shall not be repealed, but shall exist in full force and effect as though its amendment had never been attempted, and it shall be the duty of the board to enforce said section as to the members in such state as it exists before the adoption of this amendment, the purpose of this paragraph being to provide against a hiatus in the law, and to restore to life the effectiveness the said section as it now is if this amendment shall for any reason be held not valid as to the present members of the fourth class.

(q) If any provision or paragraph of this section shall for any reason be held invalid, the remaining portions of the section shall be unaffected thereby.

409 Mr. S. H. Esarey, requests Articles 2, 5 and 13 of the Constitution of the Supreme Lodge Knights of Pythias, included in the bill of exceptions, as per stipulation. These are all included in Exhibits 8 and 9, requested by Mr. Livingston, for the plaintiff.

Mr. S. H. Esarey, requests Sections 1-5 inclusive and Sections 15 and 17 of Article 8 of the Constitution of the Supreme Lodge Knights of Pythias, included in the bill of exceptions, as per stipulation. These are all included in exhibit 8, requested by Mr. Livingston for the plaintiff.

Mr. S. H. Esarey, requests Supreme Statutes 3, 20-24 inclusive, 403, 404, 406, 452, 461, 468, 482, 495, 501, 504, 518, 519, 525,

530, 531, 536 and 482 from page 11 of Supplement Two, included in the bill of exceptions as per stipulation. Of these Supreme Statutes 403, 404, 406, 452, 461, 468, and 482 are all included in Exhibit #10, requested by Mr. Livingston for the plaintiff. The remainder, to-wit: Supreme Statutes 3, 20-24 inclusive, 495, 501, 504, 518, 519, 525, 530, 531, 536 and 482 from page 11 of Supplement Two, are numbered Exhibit #11, requested by the defendant, and are as follows:

#### 410 COPY OF EXHIBIT No. 11 REQUESTED BY THE DEFENDANT.

##### Chapter III.

##### Supreme Lodge Officers in General.

3. Subject to the provisions of article viii, section 3, of the Supreme constitution, the officers of the Supreme Lodge named in said section shall be elected at each regular biennial convention of the Supreme Lodge. The election of such officers shall be by ballot, and shall be held at the morning session of the third day of the convention. In all cases the votes of a majority of all the members of the Supreme Lodge shall be necessary to a choice. In case of a tie, the balloting shall continue until a choice shall have been made.

##### Chapter VII.

##### Supreme Representatives.

20. There shall be elected in each grand domain, in each odd-numbered year in the same manner as grand lodge officers are elected, one Supreme Representative, whose term shall continue for four years from the first day of January following such election.

21. Any grand lodge hereafter instituted shall, at the time of its institution, elect while in convention assembled two Supreme Representatives, whose terms shall begin with the date of such election and expire as follows: one on the thirty-first day of December of the odd-numbered year following the next biennial convention of the Supreme Lodge, and one on the thirty-first day of December of the second odd-numbered year following such convention.

22. Whenever the semi-annual reports from the subordinate lodges within a grand domain for the term ending December thirty-first of the preceding year, shall show the total membership of such subordinate lodges to equal or exceed ten thousand members in good standing, then such grand domain shall be entitled to one additional Supreme Representative for such ten thousand members; provided, that no grand domain shall be entitled to more than five Supreme Representatives.

411 23. So long as a grand domain shall continue, under the provisions of this chapter, entitled to additional representa-

tion, such increased representation may be provided for in such manner as the grand lodge may by law prescribe.

24. The term of an additional Supreme Representative elected in an odd-numbered year shall be for four years from the first day of January, following such election; provided that, if the grand domain by which such election is had already has one or more additional Supreme Representatives, then such term shall be for four years or for two years from the first day of January following the election, as will most nearly secure the expiration of the terms of one-half the whole number of Supreme Representatives from such grand domain on the thirty-first day of December of each odd-numbered year.

495. The right to change, increase, or adjust the schedule of rates in the fourth and fifth classes, respectively, or any of them, is expressly reserved to the Supreme Lodge, as is also the right to apply any such changed, increased or adjusted schedule of rates to all the members' certificates. This right of readjustment includes the right to advance members without reference to the plan or class of which they are members, to their attained age at any time, and apply new rates applicable thereto when deemed necessary by the Supreme Lodge to carry out the purposes of the insurance department.

501. From and after January 1, A. D. 1909, all members of the fourth class who may desire to transfer their membership to the fifth class shall have the right to do so, upon surrendering their benefit certificates in the fourth class and being rated at their attained ages at date of such transfer, upon complying with such conditions, rules and regulations as the board of control may adopt from time to time; and for the purpose of carrying this section into force, the board of control shall have full power and authority to make such rules and regulations with respect to the transfer of members of the fourth class to the fifth class, as it may deem wise and proper.

412 504. Members holding less than the maximum amount of insurance in the fourth class may, if under fifty years of age, apply for an increase in the fourth class not to exceed the amount limited by their occupation, by making application to the section in which membership is held, on a special blank provided for that purpose by the board. Such application and requirements shall be in all respects the same as that of a new application and shall be forwarded to the board with the original membership certificate attached. The applicant shall pay the required membership fee, the same as is required of new members, and the first monthly payment required under the tables of rates. If accepted by the board, a new certificate for the full amount of insurance shall be issued. The monthly payment of the member on the amount of the increase shall be in accordance with the occupation or employment and age of the applicant at the time the application for increase is made, which monthly payment shall be added to the monthly payment required under the original certificate. In like manner, members of any of the plans in the fifth class who might be eligible for membership therein in the first instance, at that time



may apply for increase to the maximum of five thousand dollars in said class, provided, however, that no member shall be entitled to carry an aggregate amount of insurance in the insurance department of more than five thousand dollars.

518. Whenever any member of the insurance department withdraws from his subordinate lodge, or whenever his membership therein ceases from any cause other than by his death, his membership in the insurance department terminates, and his benefit certificate therein ipso facto forfeits, except that the member who takes a withdrawal card from his lodge, or secures a grand lodge or Supreme Lodge card, may retain his membership in the insurance department for a period of twelve months, by paying regularly all the payments or assessments required of him and otherwise maintaining his good standing in the insurance department. Upon the deposit of such withdrawal, grand lodge, or Supreme Lodge card

413 with another lodge, he shall at once notify the secretary of the section of which he is a member, and shall forward to the board of control a certificate signed by the master of finance of the lodge in which said card is deposited; provided, that if a member holding a card is unable by reason of old age or physical disability to connect himself with a subordinate lodge, and a certificate to that effect under the seal of the lodge is furnished by the member to the board within thirty days after his rejection by the lodge, he shall not lose his membership in the insurance department, so long as he shall pay regularly the monthly payments or assessments required of him, and observe all the other provisions of the laws of the Supreme Lodge; provided, that this provision shall not operate to forfeit any certificate that may have been commuted into a paid-up or extended insurance contract, but in all such cases the holder of any certificate so affected shall be deemed a member of the society for the purpose of maintaining said certificate until the expiration of the period of extended insurance or maturity of the paid-up certificate; and provided further, that where any certificate entitled to be commuted into a paid-up certificate or extended insurance has not already been commuted at the time of the happening of any cause of forfeiture mentioned in this section, then the certificate so affected shall ipso facto be commuted into a paid-up certificate or extended insurance contract, as provided in these statutes, and the rule stated in the first paragraph of this proviso shall then apply to such certificate.

519. The regular monthly payments and assessments of all members of the insurance department shall be due and payable to their respective section secretaries without notice in advance, on the first day of each and every month, and the failure to make such payment on or before the 20th day of each month shall cause from and after such date a forfeiture of the certificate of membership and all right, title and interest such member or his beneficiaries may have in and to the same, and membership shall thereby cease ipso facto, provided that members of plans "A," "B" and "D" in the fifth class,  
414 entitled to the privileges and benefits of paid-up or extended insurance as provided in these statutes, may take advantage

of the options therein given them, upon giving previous notice to the board of control. In case of forfeiture under the above section, membership may be regained only in the manner provided by law.

525. Special assessments may be levied upon all members of the insurance department and called by the board, when deemed necessary, and shall be governed by the same laws and rules as are the regular monthly payments, except that they shall not be payable until thirty days after call.

530. The receipt and retention of payments and assessments from members by the insurance department shall not constitute a waiver of any law of the Supreme Lodge, or defense which might be relied on had such payments not been received and retained. No course of dealing between members and officers, whether persisted in for a long or short time, shall waive this provision or the effect of same; all of said laws enacted by the Supreme Lodge, having been enacted by it in its representative and legislative capacity only, in which every member is a party, are intended to bind all members at all times.

531. Contracts of insurance made in the insurance department shall be made with reference to the laws of the state, territory or province where the head office of the said insurance department may be located at the time made, and all such contracts shall, without reference to the place of residence of the members, be deemed contracts of such state, territory or province where said head office is located at the time made and to be controlled by the laws of same. In any suit at law or equity brought upon or involving any benefit certificate issued by the insurance department, this rule shall apply to the exclusion of any rule or law to the contrary, and the rights of the parties claiming through or by reason of said certificate; and the obligations of the insurance department shall be determined by the laws of the state, province or territory, where such head office was located at the time said certificate was issued.

415 536. The laws of the order, as herein enacted, with any and all amendments thereto hereafter enacted by the Supreme Lodge, with all rules and regulations of the board of control, as the same exist or may from time to time be adopted, shall be and constitute part of the contract of insurance between the members of the insurance department and such department, and shall be binding upon such members.

### From Supplement Two. *In*

482. (Amended paragraph "c.")

The amounts received under the above table shall be divided into two separate and distinct funds, to be known, respectively, as the "mortuary fund of the fourth class," and the "expense fund of the insurance department." That part of each monthly payment which is required for mortality and reserve purposes according to the American Experience Table of Mortality with interest figured at 3½ per centum per annum, shall be placed in and become a part of the mortuary fund of the fourth class and the balance of said payment

shall be placed in and become a part of the expense fund of the insurance department to be used for paying the expenses of the insurance department.

In effect October 16, 1918.

416 Mr. D. W. Livingston, Attorney for the plaintiff, requests that the table of rates applying to members of the Fourth Class during the year 1910, down to December 31st, 1910, be included in the bill of exceptions as an exhibit, as per stipulation. Same is found on page 123, Article 468, Statutes adopted in 1906, and is as follows, being Exhibit #12:

### EXHIBIT No. 12.

*Table of Monthly Payments.*

Age.	\$500. Amount.	\$1,000. Amount.	\$2,000. Amount.	\$3,000. Amount.
21.....	\$0 45	\$0 90	\$1 80	\$2 70
22.....	50	95	1 90	2 85
23.....	50	1 00	2 00	3 00
24.....	50	1 00	2 00	3 00
25.....	55	1 05	2 10	3 15
26.....	55	1 10	2 20	3 30
27.....	55	1 10	2 20	3 30
28.....	60	1 15	2 30	3 45
29.....	60	1 20	2 40	3 60
30.....	65	1 25	2 50	3 75
31.....	65	1 25	2 50	3 75
32.....	65	1 30	2 60	3 90
33.....	70	1 35	2 70	4 05
34.....	70	1 40	2 80	4 20
35.....	75	1 45	2 90	4 35
36.....	75	1 50	3 00	4 50
37.....	80	1 60	3 20	4 80
38.....	85	1 65	3 30	4 95
39.....	85	1 70	3 40	5 10
40.....	90	1 75	3 50	5 25
41.....	90	1 85	3 70	5 55
42.....	95	1 90	3 80	5 70
43.....	1 00	2 00	4 00	6 00
44.....	1 05	2 10	4 20	6 30
45.....	1 10	2 15	4 30	6 45
46.....	1 15	2 25	4 50	6 75
47.....	1 20	2 35	4 70	7 05
48.....	1 25	2 45	4 90	7 35
49.....	1 30	2 60	5 20	7 80
50.....	1 35	2 70	5 40	8 10

417 And the defendant, to maintain the issues on its behalf to be maintained, adduced testimony as follows:

Mr. WALTER O. POWERS, being produced and duly sworn, on behalf of the defendant, testified as follows:

Examined by Mr. Esarey:

1 Q. You may state your name?

A. Walter O. Powers.

2 Q. Where do you live?

A. Indianapolis, Indiana.

3 Q. What official position do you hold, if any, with the defendant?

A. I am the General Secretary of the Supreme Lodge, Knights of Pythias, Insurance Department.

4 Q. How long have you held such position?

A. Since November, 1910.

5 Q. State in a general way your duties as General Secretary of the Insurance Department?

A. I have charge of the books and records of the Board of Control; conduct correspondence with Section secretaries or members of the insurance department, and have general charge of the general office of the Insurance Department.

6 Q. Were you acquainted with the financial condition of the Supreme Lodge, Knights of Pythias, prior to 1910?

A. I was.

7 Q. Will you state to the Court the general condition of that department in 1910 with respect to the insurance in force and the number of members?

Mr. Livingston: Objected to as not the best evidence, incompetent, irrelevant and immaterial.

The Court: Overruled. Exception.

418 A. On October 31, 1910, which was following the Supreme Lodge convention of that year, the membership of the insurance department was 11,392 and the insurance in force \$21,529,000. The amount of the mortuary fund to the credit of the members of the Fourth Class on the date stated, was \$675,800.85.

8 Q. Did I understand you to state that the membership for the entire department was 11,392?

A. The membership for the Fourth Class.

9 Q. You may explain if you will what was meant by the Fourth Class?

A. It was a division of the membership of the insurance department, determined by the class or form of certificate held by them.

10 Q. In general, what dates did the membership of the Fourth Class date from?

A. From 1884 down to approximately 1910, there being few if any members admitted after that date.

11 Q. Were there other members of the Insurance Department besides those of the Fourth Class?

A. There were.

12 Q. What designation did you give to those?

A. Members of the Fifth Class.

13 Q. And you may state whether there were any other classes and if so, about what number of persons were in them?

A. I believe there were one or two members of the old first and second classes who had ceased to make any contribution to the funds of the Insurance Department for a great many years past.

14 Q. To what department did the plaintiff's decedent, Louis J. Meyer, belong?

A. To the Fourth Class.

419 15 Q. Now, you may state in general the condition of the insurance department with reference to the funds and membership say in 1906, or prior to 1910?

Mr. Livingston: Objected to as incompetent, irrelevant and immaterial, not the best evidence, not within the issues of this case, and self serving.

The Court: Overruled. Exception.

A. The membership of the Fourth Class on December 31, 1906, was \$1,819 and the insurance in force was \$125,445,000 and the amount of the mortuary fund to the credit of the members of the Fourth Class on the date stated was \$1,189,277.53.

16 Q. You may state what the experience of the Fourth Class was from 1906 to 1910 with reference to whether it was gaining in membership and funds, or losing?

Mr. Livingston: Objected to as incompetent, irrelevant and immaterial, not within the issues in this case, not the best evidence, self serving, and no proper foundation laid.

The Court: Overruled. Exception.

A. The membership of the Fourth Class continued to decrease from 1906 until 1910, principally due to the transfer of some of its members to the Fifth Class; the lapse of certificates and by death. During the period from 1906 until 1910, and prior to the meeting of the Supreme Lodge in August, 1910, there were five extra assessments called in addition to the twelve for each year, during the period stated. Two were called in 1909 in addition to the twelve for that year, and three during the year 1910 in addition to the twelve for that year, the same as applied to the year 1910 being for the months of March, May and July.

420 17 Q. By the experience of that class you may state whether it would have been able to continue the payments of its certificates and if so, from the experience of the society, how long would it have been able to continue the payments on the certificates in force at that time?

Mr. Livingston: Objected to as incompetent, irrelevant and immaterial, no proper foundation laid, not the best evidence, and calling for a conclusion of the witness.

The Court: Overruled. Exception.

A. The rates in force from September 1, 1901 to January 1, 1911, were based upon what is known as the National Fraternal Congress Table, but only 85% of the table was used, 15% of same being deducted for the managing expenses of the society. The so called National Fraternal Congress Table assumes a lower death rate than the actual mortality experienced by the Fourth Class, so that the rate collected from members of said class was greatly deficient in that the said mortality table did not represent the actual mortality experience of the Fourth Class and from the further fact that only 85% of said table was used for mortuary purposes.

Mr. Livingston: Plaintiff moves to strike out the answer for the reasons stated in the objection and for the further reason that it is not responsive.

The Court: Overruled. Exception.

18 Q. For how long a time, according to that experience, would it have been possible to continue payments on the full amount of the certificates of the Fourth Class after 1910?

421 Mr. Livingston: Objected to as incompetent, irrelevant and immaterial, not the best evidence, no proper foundation laid, calling for a conclusion of the witness and not a statement of fact.

The Court: Overruled. Exception.

A. I am unable to give the exact period, but the contribution being made by members of the Fourth Class at that time would not have been sufficient to insure the payment of the full amount of the face value of their certificates as they matured.

19 Q. You may state what amount of the insurance payments of Mr. Meyer was required—what amounts were required out of his payments for the mortuary expense of his insurance.

Mr. Livingston: Objected to as incompetent, irrelevant and immaterial, self serving, no proper foundation laid, calling for a conclusion of the witness and not the best evidence.

The Court: Overruled. Exception.

A. The amount of each monthly payment required from the plaintiff Louis J. Meyer under the legislation effective January 1, 1911, was \$26.30 per month.

20 Q. What results do you find in referring to his insurance. I mean, whether or not the amounts that he paid, paid the actual cost of the insurance, and if so, how much more or how much less?

Mr. Livingston: Objected to as incompetent, irrelevant and immaterial, self serving, no proper foundation laid, calling for a conclusion of the witness and not the best evidence.

The Court: Overruled. Exception.

A. I have taken the payments made by Louis J. Meyer since the date of his admission to the said Fourth class of the insurance department and have accumulated the same with interest at 3-1/2%

and charged him with the actual cost of the protection furnished, accumulated at the same rate. The mortuary contributions made by him, in comparison with the actual cost of the insurance furnished, without considering any reserve or other factor, was a deficit due from him on the basis stated of \$1,403.86.

21 Q. Do you mean, Mr. Powers, that this amount was the net deficit of the actual cost of insurance, from the amounts paid?

Mr. Livingston: Objected to as incompetent, irrelevant and immaterial, self serving, no proper foundation laid, calling for a conclusion of the witness and not the best evidence.

The Court: Overruled. Exception.

A. It represents a deficit, or protection secured by him at less than actual cost to the amount stated, without taking into consideration any reserve or other factor.

22 Q. You spoke of extra assessments and also a former fixing of rates. How many changes in the rates have been made since 1885?

Mr. Livingston: Objected to as incompetent, irrelevant and immaterial, self serving, no proper foundation laid, calling for a conclusion of the witness and not the best evidence.

The Court: Overruled. Exception.

A. There was a special assessment called an extra assessment, called on July 15, 1892. The rates were increased five cents per month per \$1,000 of insurance on March 1, 1894. A Special assessment was called in addition to the twelve collected for the year 1901, same being called under date of May 15th of the year stated. The rates prior to the legislation of August 1910, were in force from and after Sept. 1, 1901.

423 Q. You may state, in 1901, how many classes there were of the members of the Insurance Department?

Mr. Livingston: Objected to as incompetent, irrelevant and immaterial, self serving, no proper foundation laid, calling for a conclusion of the witness and not the best evidence.

The Court: Overruled. Exception.

A. The Fourth Class.

24 Q. You may state on what basis the insurance rates were fixed in the year 1885, or at the time when the plaintiff's decedent entered the society, or when the certificate was issued?

Mr. Livingston: Objected to as incompetent, irrelevant and immaterial, self serving, no proper foundation laid, calling for a conclusion of the witness and not the best evidence.

The Court: Overruled. Exception.

A. Upon no well recognized mortality table. Each man paid on a table which was supposed to be based on his expectancy of life. There was no adjustment or fixing of rates based upon any recognized standard and by reason of such condition the rates proved wholly insufficient and inadequate.



25 Q. What occasioned the rate change in 1894?

A. Due to the fact that the mortuary contributions of the members of the Fourth Class were not sufficient to meet the maturing death claims.

26 Q. Was there any re-adjustment of the basis of rates:

Mr. Livingston: Objected to as incompetent, irrelevant and immaterial, self serving, no proper foundation laid, calling for a conclusion of the witness and not the best evidence.

The Court: Overruled. Exception.

A. There was not.

27 Q. Just an addition of five cents per month per \$1,000

424 A. Yes sir.

28 Q. When was the next general increase made?

Mr. Livingston: Objected to as incompetent, irrelevant and immaterial, self serving, no proper foundation laid, calling for a conclusion of the witness and not the best evidence.

The Court: Overruled. Exception.

A. They attempted to adjust on the basis of the National Fraternal Congress Table, and at that time there were unpaid death claims amounting to \$425,500. As stated before this table did not represent the actual mortuary, or mortality experience of the Fourth Class, and in addition to that they assumed, or took only 85% of that table for mortuary purposes.

29 Q. State what was done in that re-adjustment with reference to the age of the members?

Mr. Livingston: Objected to as incompetent, irrelevant and immaterial, self serving, no proper foundation laid, calling for a conclusion of the witness and not the best evidence.

The Court: Overruled. Exception.

A. The age of the members assessed under the re-rating of September 1901 was the age at which they were originally entered in the insurance department, with the exception of those members who were admitted in 1901, or at the time the readjustment was made.

30. Q. Now, in 1910, you may state what basis the rates were placed upon?

Mr. Livingston: Objected to as incompetent, irrelevant and immaterial, self serving, no proper foundation laid, calling for a conclusion of the witness and not the best evidence.

The Court: Overruled. Exception.

425 A. Upon the American Experience Table of Mortality, with an interest assumption of  $3\frac{1}{2}\%$ .

31 Q. You may state what age was adopted at that time as the age for estimating cost.

Mr. Livingston: Objected to as incompetent, irrelevant and immaterial, self serving, no proper foundation laid, calling for a conclusion of the witness and not the best evidence.

The Court: Overruled. Exception.

A. The attained age.

32 Q. What do you mean by the attained age?

A. Their age at their nearest birthday as of January 1, 1911.

33 Q. Now, state in a general way the experience of the Fourth Class members after the increase of rates of 1910?

Mr. Livingston: Objected to as incompetent, irrelevant and immaterial, not the best evidence, calling for a conclusion of the witness, no proper foundation laid.

The Court: Overruled. Exception.

A. As a result of the legislation enacted and in accordance with the provisions of the Supreme Statutes, there has been made every year following the closing of the books on December 31, 1911, an annual valuation and accounting to determine the reserve liabilities or the outstanding insurance in force and as to whether or not the conditions justified a refund, or a waiver of payments of any surplus found to exist as a result of the accounting made.

34 Q. Suppose a surplus is found to exist at the end of the year in the accounting, what result takes place?

Mr. Livingston: Objected to as incompetent, irrelevant and immaterial, not the best evidence, calling for a conclusion of the witness, no proper foundation laid.

426 The Court: Overruled. Exception.

A. The statutes provide that in such event, if conditions justify and if the surplus is sufficient, the waiving of the monthly payments of the members entitled to it.

35 Q. You may state whether or not any payments after 1911 have been waived, and if so, when and how many?

Mr. Livingston: Objected to as incompetent, irrelevant, and immaterial, not the best evidence, calling for a conclusion of the witness, no proper foundation laid.

The Court: Overruled. Exception.

A. To members of the Fourth Class or the Fifth Class?

36 Q. The Fourth Class?

A. There has not.

37 Q. You may state the condition of the funds of the Fourth Class with reference to the payment of death losses from 1911 on?

Mr. Livingston: Objected to as incompetent, irrelevant and immaterial, not the best evidence, calling for a conclusion of the witness, no proper foundation laid.

The Court: Overruled. Exception.

A. All death claims have been paid promptly when satisfactory proofs of death have been received.

38 Q. Can you state the number of members of the Fourth Class at present and the condition of the funds in that class?

Mr. Livingston: Objected to as incompetent, irrelevant and immaterial, not the best evidence, calling for a conclusion of the witness, no proper foundation laid.

The Court: Overruled. Exception.

A. The membership is approximately 1,000; the insurance about \$1,800,000. The Fourth Class mortuary fund on August 31st, was in the neighborhood of \$625,000.

427 39 Q. You may state whether that fund, together with the contributions, in your judgment will be sufficient to mature the certificates of the Fourth Class?

Mr. Livingston: Objected to as incompetent, irrelevant and immaterial, not the best evidence, calling for a conclusion of the witness, no proper foundation laid.

The Court: Overruled. Exception.

A. It will.

40 Q. State now, whether in your judgment the rates as fixed in 1910, effective January 1, 1911, were reasonable?

Mr. Livingston: Objected to as incompetent, irrelevant and immaterial, no proper foundation laid, not the best evidence, calling for a conclusion of the witness, and a fact for the Court to determine.

The Court: Overruled. Exception.

A. They are, and in my opinion, if a less amount were collected, it would not have been sufficient to pay in full the outstanding obligations as represented by the insurance in force.

Mr. Livingston: Plaintiff moves to strike out that part of the answer following the words "They are." as not responsive.

The Court: Overruled. Exception.

41 Q. You may state what person or persons formulated the rates enacted in 1910? Who prepared the table of rates?

Mr. Livingston: Objected to as incompetent, irrelevant and immaterial, not within the issues, and not the best evidence, no proper foundation laid.

The Court: Overruled. Exception.

A. Mr. S. H. Wolf, our consulting actuary of New York.

428 Cross-examination by Mr. Livingston:

42 Q. Mr. Powers, at the time the rates went into effect, January 1, 1911, all the Fourth Class members then belonging to the insurance department were re-rated at the then attained age?

A. With the exception of those who had not availed themselves of the privileges of the 1910 legislation and selected one of the options which were available at that time. The others were re-rated.

43 Q. At the attained age?

A. Yes sir.

44 Q. And from and after January 1, 1911, there were no new members introduced into the old Fourth Class were there?

A. Practically none.

45 Q. Now these deficits that you mention down through the history of the organization; was not that due in part to overhead expenses and bad investments?

A. That had nothing whatever to do with that. I considered only the mortuary expense of the payments they made, eliminating entirely the expense factor.

46 Q. Well, the lodge or organization suffered a bad loss around 1900 or 1901 didn't it, by reason of some funds being misappropriated?

A. No, simply a loss of interest, possibly about \$2,500 on some investments that we had, all of which was carried in the expense fund and did not in any way effect the mortuary fund.

47 Q. That was kept separately?

A. Exactly.

48 Q. Mr. Powers, can you state the old rate on Mr. Meyer prior to 1911?

A. From and after September 1, 1901, it was \$5.70.

49 Q. Prior to that time?

A. Prior to 1901?

429 50 Q. Yes.

A. In 1885 and down to March 1, 1894, \$3.30; from March 1, 1894, down to 1901, \$3.40; from 1901 down to 1910, inclusive, \$5.70.

51 Q. That is per month on each \$1,000?

A. No, that is his total monthly payment.

52 Q. And the rate which became effective January 1, 1911, what did that provide for?

A. That made his monthly payment, based upon his attained age at that time, \$26.30, under option C.

53 Q. What was the amount of Mr. Meyer's policy or certificate?

A. \$2,000.00.

54 Q. The deficit you state on Mr. Meyer's policy was over \$1,000?

A. \$1,403.86.

55 Q. What was the age of Mr. Meyer?

A. The age assessed in 1885 was fifty-one.

The Court: His attained age in 1910; would that be his actual age?

The Witness: It would be his actual age as of January 1, 1911, or his age at his nearest birthday on that date.

Redirect examination by Mr. Esarey:

56 Q. You spoke of transferring Fourth Class to Fifth Class. You may state when the Fifth Class was organized?

A. On January 1, 1907.

57 Q. Now state what was the object of that organization, or what was done with reference to it?

A. The object was to furnish safe and sound protection to those who desired to make the transfer, being assured that their protection would be paid at its maturity.

58 A. Now, what led the society up to that? What made them fear that they were not going to be paid?

430 Mr. Livingston: Objected to as incompetent, irrelevant and immaterial, self serving, calling for a conclusion of the witness, not the best evidence.

The Court: Overruled. Exception.

A. Due to the condition of the Fourth Class mortuary fund being a decreasing fund, due to the excessive mortality demands by reason of increasing death losses, due to the advancing age of its members, and also the effect of the extra assessments which were called in 1909 and 1910, the result of which increased the lapses over four times the normal condition, and our experience was that a very large proportion of the lapses were the more desirable risks, being the younger ages.

59 Q. You may state whether or not any actuary was called in in 1904 or 1905, about the time of the organization of Class Five?

Mr. Livingston: Objected to as incompetent, irrelevant and immaterial, self serving, calling for a conclusion of the witness, not the best evidence.

The Court: Overruled. Exception.

A. There was.

60 Q. You may state, if you know, after his investigation of the matter, what the results showed?

Mr. Livingston: Objected to as incompetent, irrelevant and immaterial, self serving, calling for a conclusion of the witness, not the best evidence, and further, it is hearsay.

The Court: Sustained. Exception.

61 Q. You may state whether or not you assisted in that investigation and have personal knowledge of the books showing the results of it?

Mr. Livingston: Objected to as incompetent, irrelevant and immaterial, self serving, calling for a conclusion of the witness, not the best evidence.

431 The Court: Overruled. Exception.

A. I have, and I did assist in the work at that time.

62 Q. You may then state the result of that investigation.

Mr. Livingston: Objected to as incompetent, irrelevant and immaterial, self serving, calling for a conclusion of the witness, not the best evidence, and further, it is hearsay.

The Court: Overruled. Exception.

A. The result of that investigation which was made to determine the reserve liability which should have been on hand at that time as

a mortuary fund to insure the payment of outstanding insurance upon maturity was, that in place of a mortuary fund of approximately \$1,189,000, the reserve at that time should have been approximately \$30,000,000.

63 Q. What action was taken now with reference to this disclosure?

Mr. Livingston: Objected to as incompetent, irrelevant and immaterial, self serving, calling for a conclusion of the witness, not the best evidence.

The Court: Overruled. Exception.

A. The action by the Supreme Lodge, Knights of Pythias, at the Milwaukee convention in 1910.

64 Q. You may state whether there was any attempt to provide the insurance in the Fifth Class for the benefit of those people in the Fourth Class or not?

Mr. Livingston: Objected to as incompetent, irrelevant and immaterial, self serving, calling for a conclusion of the witness, not the best evidence.

The Court: Overruled. Exception.

432 A. The provision enacted at that time provided for the transfer of members from the Fourth Class to the Fifth Class as of their attained age, but without medical examination or other requirement except that they pay the rate for the class or form of protection they desired.

65 Q. When a member transfer from the Fourth Class to the Fifth you may state whether his rate was the same or not after the transfer?

Mr. Livingston: Objected to as incompetent, irrelevant and immaterial, self serving, calling for a conclusion of the witness, not the best evidence.

The Court: Overruled. Exception.

A. That would depend largely upon the form of protection he applied for. In other words, in some instances the rate in the Fourth Class was about the same as a term insurance plan, one of the plans under the Fifth Class certificates which was only issued with a rate sufficient to cover the costs for the term it was in force.

66 Q. State whether or not new members coming into the Fifth Class were rated as of their age on entrance?

Mr. Livingston: Objected to as incompetent, irrelevant and immaterial, self serving, calling for a conclusion of the witness, not the best evidence.

The Court: Overruled. Exception.

A. They were.

67 Q. And were the members transferred from the Fourth to the Fifth Class, rated at the attained age of transfer?

Mr. Livingston: Objected to as incompetent, irrelevant and immaterial, self serving, calling for a conclusion of the witness, not the best evidence.

433 The Court: Overruled. Exception.

A. They were.

68 Q. Can you state approximately how many transfers there were from the Fourth Class to the Fifth Class before 1910?

Mr. Livingston: Objected to as incompetent, irrelevant and immaterial, self serving, calling for a conclusion of the witness, not the best evidence.

The Court: Overruled. Exception.

A. About fifty-five thousand members.

69 Q. You may state if you can, approximately the number of transfers from the Fourth to the Fifth Class after 1910?

Mr. Livingston: Objected to as incompetent, irrelevant and immaterial, self serving, calling for a conclusion of the witness, not the best evidence.

The Court: Overruled. Exception.

A. Comparatively few. I should judge about—After 1910?

70 Q. Yes.

A. Not more than 5,000.

71 Q. You may state whether or not there was any great amount of lapses of the Fourth Class between 1906 and 1910?

Mr. Livingston: Objected to as incompetent, irrelevant and immaterial, self serving, calling for a conclusion of the witness, not the best evidence.

The Court: Overruled. Exception.

A. There was a very material increase in the lapses late during that period.

72 Q. Are you acquainted with the average age of members for the last eight, ten, twelve, or fourteen years?

434 Mr. Livingston: Objected to as incompetent, irrelevant and immaterial, self serving, calling for a conclusion of the witness, not the best evidence.

The Court: Overruled. Exception.

A. In the Fourth Class?

73 Q. Yes.

A. In a general way.

74 Q. And of the Fifth Class also are you?

A. I am.

75 Q. You may state, say in the last fifteen years, what has been the trend in the fourth class of the average age of its members?

Mr. Livingston: Objected to as incompetent, irrelevant and immaterial, self serving, calling for a conclusion of the witness, not the best evidence.

The Court: Overruled. Exception.



A. A marked increase of at least over a year each year by reason of the fact that the members of that class would advance one year each year and there being no new members, which would have a tendency to reduce the average age.

76 Q. And in the Fifth Class?

Mr. Livingston: Objected to as incompetent, irrelevant and immaterial, self serving, calling for a conclusion of the witness, not the best evidence.

The Court: Overruled. Exception.

A. The average age in that class has been continually decreasing, due to the new members admitted.

Witness excused.

435 Mr. GEORGE A. BANGS, being produced and duly sworn, on behalf of the defendant, testified as follows:

Examined by Mr. Esarey:

77 Q. State your name?

A. George A. Bangs.

78 Q. Where do you live, Mr. Bangs?

A. Grand Forks, North Dakota.

79 Q. State what, if any, official connection you have with the insurance department, Knights of Pythias?

A. At the present time I am a member of the Board of Control of the insurance department.

80 Q. How long have you been a member of the Board of Control?

A. Continuously for the last eleven years, and I served two years prior to that, from 1902 to 1904.

81 Q. Then you skipped a little space in there?

A. From 1902 to 1904 I was a member of the Board of Control. From 1904 to 1906 I was Chairman of the special committee created by the Supreme Lodge at the 1904 convention for the purpose of investigating conditions of the insurance department, then consisting of the Fourth Class practically alone, so that for those two years, 1904 to 1906, I served in that capacity, then I went on the Board of Control in 1910 at the Milwaukee convention. At that time I was serving as Chairman of the Insurance Department Committee of the Supreme Lodge. I was a member of the Supreme Lodge from 1902 to 1910.

82 Q. You spoke of being on a committee from 1902 to 1904?

A. I was on the Board of Control from 1902 to 1904.

83 Q. State what you had to do with the investigation of the insurance department at that time, and what results you found?

Mr. Livingston: Objected to as incompetent, irrelevant and immaterial, not within the issues, not the best evidence, and calling for a conclusion.

86 The Court: Overruled. Exception.

A. I was the Chairman of the Special Committee created at the 1904 convention of the Supreme Lodge, the purpose of which was to investigate the condition of the Fourth Class, and I served during those two years, from 1904 to 1906 in that capacity, performing the duties of Chairman of that Committee.

84 Q. What, now, did you do?

A. I personally worked with the actuaries that were employed in the making of the investigation, went to Chicago, to the general office of the institution and staid there part of the time, not all of the time, with the actuaries, assisting them in ascertaining the facts and arriving at a determination as to the condition of the insurance department, which as I say consisted of the Fourth Class at that time. I also met with the committee every three months, with the Board of Control, during that two year period; employed actuaries, digested their reports, and finally prepared their report to the Supreme Lodge in 1906.

85 Q. What condition did you find upon your investigation?

Mr. Livingston: Objected to as incompetent, irrelevant and immaterial, not within the issues, not the best evidence, and calling for a conclusion.

The Court: Overruled. Exception.

A. The Fourth Class at that time showed an actual deficit of approximately \$30,000,000. That is, the amount required to be on hand in cash and invested at  $3\frac{1}{2}\%$  or  $4\%$ , was \$30,000,000, to carry out to their maturity and pay the obligations that had been incurred by the Supreme Lodge.

86 Q. That is in the Fourth Class?

A. Yes sir, of the Insurance Department. That was the problem we had before us, to find out what we should do with that  
437 Fourth Class. In addition there were several hundred thousand dollars of unpaid death claims, having accumulated in the meantime and an item on hand of considerable money that had been invested, between \$8,000 and \$12,000 in cash.

87 Q. You reported this condition of affairs to the Supreme Lodge in 1906?

Mr. Livingston: Objected to as incompetent, irrelevant and immaterial, not within the issues, not the best evidence, and calling for a conclusion.

The Court: Overruled. Exception.

A. Yes sir.

88 Q. What, if anything, was done with reference to remedying this condition?

Mr. Livingston: Objected to as incompetent, irrelevant and immaterial, not within the issues, not the best evidence, and calling for a conclusion.

The Court: Overruled. Exception.

A. The creation of the Fifth Class.

89 Q. Explain how that was done and what for?

Mr. Livingston: Objected to as incompetent, irrelevant and immaterial, not within the issues, not the best evidence, and calling for a conclusion.

The Court: Overruled. Exception.

A. We were confronted with the problem of re-rating the Fourth Class so that that class could take care of itself and pay out its obligations. When I say the Fourth class, I mean the insurance department, because there was only the 1st, 2nd, 3rd and 4th classes and but probably fifteen or twenty members in classes outside the 4th class, so that we were concerned only with the Fourth Class.

438 We had to first face the arbitrary re-rating of members of the Fourth Class, with the attendant disturbance and dissatisfaction resulting from an arbitrary re-rating; Second, we could create a new class and by the education of the members of the Fourth Class to the desirability of permanent, safe insurance, obtain their transfer in due time into the Fifth Class. The Fifth Class was created as a re-rating class in 1906, and began in 1907, January 1st, 1907.

90 Q. With what results?

Mr. Livingston: Objected to as incompetent, irrelevant and immaterial, not within the issues, not the best evidence, and calling for a conclusion.

The Court: Overruled. Exception.

A. In a general way, approximately  $\frac{2}{3}$  or possibly  $\frac{3}{4}$  of the members volunteered to transfer under the new rates, and accepted voluntarily the necessities of the situation. They became the Fifth Class. The remnant of the old Fourth Class continuing in the Fourth Class gradually diminished in numbers, with an increasing average age and an increasing deficit until in 1910 we were confronted with the necessity of re-rating this class in order that it might not become absolutely insolvent, and that was done at the 1910 convention. I was Chairman of the Insurance Department Committee of the Supreme Lodge at that time.

91 Q. State how you arrived at the figures which were made the basis of the rates for 1910?

Mr. Livingston: Objected to as incompetent, irrelevant and immaterial, not within the issues, not the best evidence, no proper foundation laid, calling for a conclusion of the witness.

The Court: Overruled. Exception.

438½ A. We adopted the American Experience Table of Mortality in fixing the rates for the Fourth Class in 1910. That was precisely the same rate and table of mortality that had been fixed for the Fifth Class in 1906, just the same. There may be a trifle of difference in the expense item, but as to the mortality rate, it is the same.

92 Q. If there should be a distinction in the expense rate, you may state whether that would — more favorable to the older members, or less favorable?

Mr. Livingston: Objected to as incompetent, irrelevant and immaterial, not within the issues, not the best evidence, no proper foundation laid, calling for a conclusion of the witness.

The Court: Overruled. Exception.

A. It is favorable to the older members, that is to the Fourth Class. We charge them less in proportion than we do members of the Fifth Class.

93 Q. You have been on the board now practically all the time since 1910?

A. Yes sir, continuously to the present time.

94 Q. And you have been thoroughly acquainted with the condition of the department since that time?

A. Yes sir.

95 Q. You may state what the experience of the society has been since 1910 with respect to paying its mortuary losses?

Mr. Livingston: Objected to as incompetent, irrelevant and immaterial, not within the issues, not the best evidence, no proper foundation laid, calling for a conclusion of the witness.

The Court: Overruled. Exception.

A. It has paid them all just as fast as the death claims could be put in shape and paid.

439 96 Q. Explain what, if any, arrangement there is in case a surplus should arise from the payments made?

Mr. Livingston: Objected to as incompetent, irrelevant and immaterial, not within the issues, not the best evidence, no proper foundation laid, calling for a conclusion of the witness.

The Court: Overruled. Exception.

A. We hold an annual accounting. In the event that the mortuary experience for the preceding year has been favorable, or in the event that our investments have earned a higher rate than we expected, we credit the certificate with the amount of those earnings. If sufficient has accumulated to pass a payment or waive it, we waive it, that is, we mark their premiums paid for one month, and don't collect for that month.

97 Q. If there is any further fact with reference to this that needs explaining, in your judgment, will you explain it?

Mr. Livingston: Objected to as incompetent, irrelevant and immaterial, not within the issues, not the best evidence, no proper foundation laid, calling for a conclusion of the witness.

The Court: Overruled. Exception.

A. I think of nothing further.

98 Q. In your judgment, Mr. Bangs, is the rate fixed in 1910 a reasonable rate?

Mr. Livingston: Objected to as incompetent, irrelevant and immaterial, no proper foundation laid, self serving, and not the best evidence.

The Court: Sustained. Exception.

A. (Answer to question preceding last above question.) There is one further fact I might state. The mortality experience of the old Fourth Class at the time we made our investigation in 1904 to 1906 showed that the losses, or deaths in that class were 439 $\frac{1}{2}$  approximately the same as the American Experience Table of mortality, and exceeded by a material percentage the National Fraternal Congress Table, which was the basis of the 1901 rates. That was another fact that developed during the progress of the investigation.

Mr. Livingston: Moves to strike out the answer for the reasons stated in the objection, and as voluntary.

The Court: Overruled. Exception.

99 Q. Do you know whether since 1910 the mortality in the Fourth Class has exceeded the National Fraternal Congress Table?

Mr. Livingston: Objected to as incompetent, irrelevant and immaterial, no proper foundation laid, self serving, and not the best evidence.

The Court: Overruled. Exception.

A. There has been no accurate examination with which I am familiar to determine the mortality loss as compared with that table. I couldn't say.

Cross-examination by Mr. Jessen:

100 Q. Mr. Bangs, prior to the creation of Class Five in 1906, you say that practically all the insurance was carried in what you call Class Four?

A. Yes sir.

101 Q. After the establishment of Class Five, on an adjusted rate, you say from  $\frac{2}{3}$  to  $\frac{3}{4}$  of the old members of Class Four voluntarily went into and became members of Class Five?

A. Yes sir.

102 Q. Now, how did you divide the old mortuary fund that stood to the credit of Class Four prior to the organization of Class Five?

440 A. I think that was all turned into Class Four. I wouldn't say positively, but my recollection is that all that money went into Class Four.

103 Q. And no part of the mortuary fund of Class Four was transferred to Class Five at all?

A. I don't think there was any transfer to the mortuary fund.

104 Q. Well, you may state out of what the old risk that had been in Class Four, but was transferred to Class Five, would even-

tually be paid. I don't know whether you call it mortuary fund or not.

A. Are you asking me whether or not any moneys on hand to the credit of Class Four were transferred to the credit of Class Five, after the new class was started?

105 Q. Yes.

A. I believe there was something in the neighborhood of \$100,000 transferred to the Fifth Class and then transferred back again. I couldn't tell you the details. There was about \$100,000 of the expense fund that was made use of in connection with the re-rating, and that was subsequently transferred to the Fourth Class to my recollection.

106 Q. Now, of the remaining  $1/3$  or  $1/4$  of the members in Class Four, who didn't voluntarily go into Class Five, what became of them?

A. They are the ones who were re-rated in 1910.

107 Q. How many of them were dropped and entirely eliminated because of the increased rates?

A. Oh, there were many withdrawals. I couldn't tell you how many.

108 Q. Can you give the Court an approximation of how many dropped out because of the increased rates?

A. In 1910?

109 Q. From 1906 up to 1910?

A. There was no increase in rates for the Fourth Class in that time.

441 110 Q. Were there any withdrawals during those years, except those who went into Class Five?

A. There were a larger number of withdrawals than is usual during the latter part of that period, for the years 1909 and 1910, when it became necessary to levy special assessments.

111 Q. I am speaking of the abnormal withdrawals. Can you give the Court the approximate number of withdrawals during that period?

A. No, I couldn't.

112 Q. You say the most desirable risks in class Four transferred or were passed over to Class Five. Is that true?

A. I didn't so testify.

113 Q. Possibly I misunderstood you.

A. I would say that I believe they would, because the general history of re-rating is to that effect.

114 Q. Now, when you met in 1910 you found that the old class Four was getting in a more deplorable condition than it had been prior to that time?

A. Yes sir.

115 Q. And at that meeting your law making body enacted what is known as the Statutes of 1910, becoming effective January 1, 1911 and in which class Mr. Meyer was located?

A. Yes sir.

116 Q. Now, was the fact that his rating was raised from \$5.00 a month to something like \$26.00 a month, due in any manner

to the fact that the desirable risks had been taken out of that class by voluntary transfer to Class Five?

A. No, not in the slightest.

117 Q. Not at all?

A. His rate was based upon his attained age. It had nothing to do with other people at all.

442 118 Q. Regardless of the amount of accumulated money in the mortuary fund?

A. There was none.

119 Q. Not at all?

A. None that amounted to anything, compared with the risk. When we began the re-rating operations in 1906 there was a \$30,-000,000 deficit in the amount required to carry out the obligations.

120 Q. That deficit was a paper deficit was it not that was based upon what you thought was going to happen if all these members lived out their expectancy of life?

A. No sir, we had a list of bills payable there that amounted to \$125,000,000 on the one hand and a list of assets which consisted of promises of our members. Taking the table and figuring them out and crediting the promises of our members, left an actual deficit of something like \$30,000,000.

121 Q. Well, it was a deficit that would probably result if your present rates at that time were continued and each member lived out his expectancy of life?

A. I don't think the expectancy of life has anything to do with it. The rates are based upon the expectancy of death each year.

122 Q. The number of deaths that occur under your mortuary tables is determined by the average expectancy of life of a certain man at a certain age, isn't it?

A. No sir, not at all.

123 Q. Well, a man fifty years of age has, under a table of expectancy, a certain number of years to live, hasn't he?

A. That is a mere average and has nothing to do with the rates that are fixed.

443 124 Q. But isn't a man's expectancy in life at that age fixed upon the average years that a thousand men of that age have lived in the past? Are not the mortuary tables made up that way?

A. I don't pretend to be an expert as to matters of that character, but I am quite positive that the expectant period of life has nothing whatever to do with the fixing of rates. They are fixed upon an entirely different basis. They are fixed upon the expectancy of death, not to the individual, but to the numbers in the class.

125 Q. Well, the number of deaths that occur in a list of 1,000 men for a certain number of years, fixes the average expectancy of life in that class, doesn't it?

A. Well, it is a phase that I have never investigated, I am sure. I never understood that the expectancy of life had anything to do with the fixing of rates.

126 Q. After the rates fixed in 1910 went into effect, January 1, 1911, what was the effect upon the membership of Class Four with reference to withdrawals?



A. There were quite a large number of withdrawals.

127 Q. What per cent was cancelled or withdrawn?

A. I couldn't tell you. My recollection now is that there were perhaps two or three thousand.

128 Q. There was then about five thousand in that class?

A. No, quite a number more than that.

129 Q. How many were left in Class Four in January, 1911?

A. I wouldn't pretend to say. That is more of a detail now than it was.

130 Q. Well, in fixing your rate at \$26.00 per thousand upon men of the age of Mr. Meyer you based that rate upon the supposition that you were going to be called upon to pay all of the policies in force at that time, didn't you?

A. No sir.

444 131 Q. What did you increase the rates for, Mr. Bangs, if it was not to meet your outstanding policies and liabilities?

A. That was, of course, the object.

132 Q. Didn't you make provision, in increasing those rates, to pay all of the outstanding liabilities in the form of these certificates still in existence in Class Four?

A. Other than those who withdrew.

133 Q. But you couldn't tell then how many were going to withdraw could you?

A. No sir.

134 Q. So you fixed your rates upon the theory that all the members that were then in Class Four would continue in Class Four until death, didn't you?

A. The rates you understand, are fixed upon the mortality table. That mortality table, take for instance the American Experience Mortality Table, assumes from the experience they have gathered together, that at the age of 65, a certain number of men will die; that at 66, a larger number will die; that at 67 a larger number will die, and the rates are based upon the assumption of death that is fixed in that table, and the expectancy of life or other interests of that character do not enter into this at all.

135 Q. The question was, you were making preparations the best you could to take care of the outstanding obligations of Class Four upon the theory that each of those outstanding policies would eventually have to be paid.

A. Yes sir, other than those who withdrew.

136 Q. Did you have any way of knowing how many were going to withdraw?

A. No sir.

137 Q. Then your rates were fixed upon the basis that they would all remain, were they not?

445 A. If you choose to put it that way, Yes. It wouldn't make any difference whether one or five hundred withdrew, so long as enough remained to make the law of averages operative.

138 Q. But those who had been members for twenty-five or thirty years had been paying into this fund all that time, and if all withdrew but one member, he would have to pay nothing?

A. Yes sir.

139 Q. So that the larger the number who withdrew, the less rate those who remained would have to pay, because they would be entitled to the benefit of the fund that had accumulated?

A. Most assuredly.

140 Q. In fixing your new rate, say Twenty-six dollars and some cents per month upon Mr. Meyer's policy, it was fixed upon the theory that all would remain in that class until their policies would eventually have to be paid.

A. No sir, that was not a factor. That was not a point that was taken into consideration in fixing the rate at all.

141 Q. You estimated the number of withdrawals after the new rate went into effect as about two or three thousand. What proportion did the withdrawals bear to the total membership in Class Four?

A. I couldn't give it to you. Mr. Powers undoubtedly can give it to you.

Witness excused.

Mr. W. O. POWERS, being recalled by Mr. Esarey for further direct examination, on behalf of the defendant, testified as follows:

Examined by Mr. Esarey:

142 Q. What became of the reserve at the time of the creation of the Fifth Class? The reserve that at that time belonged to the Fourth Class?

446 A. You mean the mortuary fund of the Fourth Class?

143 Q. Yes.

A. It remained to the credit of members of the Fourth Class.

144 Q. Was that fund at any time transferred over to become the fund of the Fifth Class, or any part of it?

A. It was not.

Recross-examination by Mr. Livingston:

145 Q. Mr. Powers, the payments by members, or contributions made in different classes, are kept in separate accounts are they?

A. Exactly.

146 Q. And the Fourth Class received no benefit from the new blood going into the Fifth Class, making payments into the mortuary funds?

A. That is very true.

Redirect examination by Mr. Esarey:

147 Q. Mr. Powers, from an actuarial stand point, you may state how a table is made up. Whether a man carries his own insurance. In other words whether his payments are calculated to be sufficient to carry his insurance, together with a certain interest fund for the period of his expectancy?

Mr. Livingston: Objected to as incompetent, irrelevant and immaterial, no proper foundation laid, not the best evidence, and self serving.

The Court: Sustained. Exception.

148 Q. State whether there was any charge made to members of the Fourth Class after the creation of the Fifth Class, to transfer over to the Fifth Class?

A. There was not.

149 Q. Was there any change of rates in the membership of the fifth class after its creation?

447 Mr. Livingston: Objected to as incompetent, irrelevant and immaterial, not within the issues of this case, not the best evidence, and self serving.

The Court: Overruled. Exception.

A. There was not.

150 Q. You may state whether members of the Fourth Class were required to pass any medical examination in transferring to the Fifth Class?

Mr. Livingston: Objected to as incompetent, irrelevant and immaterial, not within the issues of this case, not the best evidence, and self serving.

The Court: Overruled. Exception.

A. They were not.

151 Q. You may state whether or not any options of any kind were given to the members of the Fourth Class upon transferring to the Fifth Class.

Mr. Livingston: Objected to as incompetent, irrelevant and immaterial, not within the issues of this case, not the best evidence, and self serving.

The Court: Overruled. Exception.

A. They had the option of choosing the form of protection they desired.

152 Q. How many kinds?

Mr. Livingston: Objected to as incompetent, irrelevant and immaterial, not within the issues of this case, not the best evidence and self serving.

The Court: Overruled. Exception.

A. About eight or ten different forms of life insurance protection.

153 Q. You may state whether or not any of those provided for the borrowing of money or the charging of their premiums or due back against the policy?

448 Mr. Livingston: Objected to as incompetent, irrelevant and immaterial, not within the issues of this case, not the best evidence and self serving.

The Court: Overruled. Exception.

A. The Fifth Class certificates?

154 Q. Yes.

A. None with the exception of the question of the loan value which if a man wished to take advantage of, the loan value must not exceed 90% of the reserve to the credit of his certificate, that would become a lien against the policy.

155 Q. In case of lapses of policies that had a reserve to their credit, what took place?

Mr. Livingston: Objected to as incompetent, irrelevant and immaterial, not within the issues of this case, not the best evidence and self serving.

The Court: Overruled. Exception.

A. The man would be entitled to either a paid up policy for the amount the reserve would purchase, or the application of the reserve to extended insurance.

156 Q. Would the lapse of such a policy constitute a profit to the society, or not.

Mr. Livingston: Objected to as incompetent, irrelevant and immaterial, not within the issues of this case, not the best evidence and self serving.

The Court: Overruled. Exception.

A. It would not.

449 Recross-examination by Mr. Jessen:

157 Q. The last answer you made that the company derived no profit whatever from a lapsed policy. Is that the statement you made?

A. It is, and it is due to the fact that the average policy that lapses is a profitable and desirable risk, a man in good health.

158 Q. But take the instant case. Mr. Meyer had been paying \$3.00, \$4.00, \$5.00 a month for 30 years and then his policy is lapsed. Doesn't the order or lodge to which he belongs derive some benefit from the funds he has been paying in during that time?

A. It was used to pay the death losses of those who had already died prior to that time.

159 Q. Well, when you say the company derives no benefit from it, you simply mean they had no surplus left?

A. The question that was asked me pertained to the Fifth Class where they had an adequate reserve. The Fourth Class condition was different in that the payments were not adequate or not sufficient to cover the current costs and there was no reserve.

160 Q. You as an expert say that if every member left in old Class Four had lapsed their policies in January, 1911, on account of the increased rates, or any other cause, that the society or defendant here, would derive no benefit at all from that?

A. The Fourth Class would in a condition of that kind.

161 Q. When you say the Fourth Class, that is only a department of this defendant order isn't it?

A. Exactly.

162 Q. So that the order would derive a benefit if all existing policies were lapsed would it not?

A. The result would be the end of the organization.

450 163 Q. And the company would have the money?

A. That is true.

164 Q. Then it would derive a benefit, would it not?

A. It would not be a benefit, because it would be a dissolution of the society.

165 Q. But they would be ahead from a dollar and cent standpoint?

A. Yes sir, they would have a balance on hand in view of the lapse of the entire Fourth Class.

166 Q. Can you give us any additional information as to the proportion that went into Class Four that lapsed after January 1, 1911 who had not transferred to Class Five?

A. In the Fourth Class?

167 Q. Yes, the remnant?

A. After the re-rating of January 1, 1911?

168 Q. Yes sir.

A. It has been very, very small. Due, I think, largely to the advancing age of the members, many of whom couldn't secure protection with any other company.

169 Q. Can you give us the percentage of lapses?

A. I can up to 1911, but it is practically nothing since January 1, 1911, for the reason stated.

170 Q. It has been practically nothing? Here in this country you know how many of the old class—of Class Four—had policies lapsed since January 1, 1911?

A. I do not know, but I know this. That the lapses in the Fourth Class for the last year or two for example, have not been running more than four or five to the month.

171 Q. You mean 1920 and 1921?

A. Yes sir. I do know that the rate of lapses since January 1911, has been very slight, because of the advanced age and physical condition of the older members.

451 172 Q. Do you know how many members you had here at the local lodge, Nebraska City, in Class Four, in January 1911?

A. I think ten or twelve.

173 Q. And do you know how many of those ten or twelve lapsed?

A. They are still tendering, as I recall.

174 Q. You call them lapsed members do you not?

A. They all lapsed in January, 1911, with the exception of M. Conner, who is a Fifth Class member.

175 Q. So that with your local lodge here, it is practically 100%

A. In that instance.

176 Q. And is this local lodge a fair example of other lodges?

A. It is not.

177 Q. Could you give a percentage, without giving numbers, the lapses during the years 1911 and 1912?

A. I couldn't off hand.

Witness excused.

Testimony closed.

451½

[Title omitted.]

### DEFENDANT'S BILL OF EXCEPTIONS.

[Composed of Volumes 1 and 2 and 3.]

And the Defendant in the above entitled cause in the District Court of Otoe County, in the Second Judicial District of Nebraska, having within the time heretofore allowed by the Court for that purpose, reduced to writing in this its Bill of Exceptions, (composed of volumes 1 & 2 & 3, each so respectively numbered; Volume 1 comprising pages 1 to 292-A, inclusive—Volume 2 comprising pages 192-B to 403, inclusive, Volume 3 comprising pages 404 to 410 inclusive) all of the evidence adduced or offered on both sides on the trial of the above entitled cause in the before named Court, all of the objections, with the grounds therefor, made to the admission of the evidence, all of the rulings of the Court on such objections, and all of the exceptions to such rulings made and taken at the time, and having served the same on the attorney for the Plaintiff, according to law, for examination and amendment, and the same being here now before me, the undersigned Judge, before whom the said cause was heard, on the motion of the attorneys for the Defendant, that the same may be settled, allowed, sealed and made a part of the record of said cause in said court.

Now I, the said Judge, do hereby certify that this the Defendant's Bill of Exceptions, composed of Volumes 1 & 2 & 3, each so respectively numbered, contains all of the evidence adduced or offered by Plaintiff and Defendant on the trial of said cause, all of the objections made to the admission of the evidence, all of the rulings of the Court on such objections, and all of the exceptions to such rulings made and taken at the time.

Wherefore, I, the said Judge, do hereby settle, allow and sign this the Defendant's Bill of Exceptions, and do hereby order that it be made a part of the record of said cause in said court.

Done at Plattsmouth, Nebraska, this 8th day of March, 1922.  
James T. Begley, Judge of the District Court.

452 I, John C. Miller, Clerk of the District Court of Otoe County, in the Second Judicial District of Nebraska, do hereby certify that this is the original Bill of Exceptions (composed of Volumes 1 and 2 & 3, each so respectively numbered, filed in the office of the Clerk of said Court in the case of George O. Meyer, Plaintiff, against The Supreme Lodge, Knights of Pythias, Defendant.

In Testimony Whereof, I hereunto set my hand and affix the seal of the said Court this 8th day of March, 1922. John C. Miller,

Clerk District Court. [Seal of Otoe County District Court, State of Nebraska.]

I, L. L. Turpin, Reporter, do hereby certify that this transcript (composed of Volumes 1 and 2 & 3, each so respectively numbered, contains all of the evidence offered on both sides on the trial of the above entitled cause in the above named Court. L. L. Turpin, Reporter.

[Endorsed:] 22706. Meyer v. Supreme Lodge, Knights of Pythias. Bill of Exceptions. Vol. 2. Supreme Court of Nebraska. Filed Mar. 30, 1922. H. C. Lindsay, Clerk.

453

[Title omitted.]

### **DEFENDANTS— VOLUME 3—BILL OF EXCEPTIONS.**

Composed of Volumes 1, 2, and 3.

(Filed Mar. 8, 1922.)

Appearances: For plaintiff, Mr. D. W. Livingston; for defendant, Mr. W. J. Connell and Mr. Sol H. Esary.

[Endorsement omitted.]

454 I hereby certify that the following, (comprising pages 404 to 410 inclusive) is Volume 3 of the Bill of Exceptions, composed of three volumes, each so respectively numbered, in the case of George O. Meyer, Plaintiff, against the Supreme Lodge, Knights of Pythias, Defendant, tried in the District Court of Otoe County, Nebraska at the regular September Term, 1921 thereof.

In witness whereof I have hereunto set my hand this 8th day of March, 1922. L. L. Turpin, Reporter.

I hereby certify that the following is Volume 3 of the Bill of Exceptions, allowed, settled and filed in the above entitled cause this day.

Dated 8th day of March, 1922. John C. Miller, Clerk of District Court. [Seal of Otoe County District Court, State of Nebraska.]

I hereby certify that the following is Volume 3 of the Bill of Exceptions allowed and settled this day in the above entitled cause.

Dated this 8th day of March, 1922. James T. Begley, Judge District Court.

455

[Title omitted.]

Judgment having been entered in favor of the plaintiff in the above entitled cause, testimony in support of a motion of Mr. D. W. Livingston, attorney for the plaintiff, for an allowance of attorney's fees, was given as follows:



456

March 1, 1922.

Mr. D. W. LIVINGSTON, being produced and duly sworn, testified as follows; on his motion for an allowance of attorney fees in the above entitled cause.

Examined by Mr. Paul Jessen:

Mr. Connell: Counsel for plaintiff states that he desires to give testimony regarding the value of attorney's fees in this case, to which the defendant objects for the reason that the case has already been submitted and tried and determined by the Court and judgment entered, and also for the reason that no sufficient foundation has been shown or exists for any such testimony; also that such proposed testimony is irrelevant under the issues of this case and it is incompetent and also immaterial.

The Court: Overruled. Exception.

178 Q. What is your name?

A. D. W. Livingston.

179 Q. What is your business?

A. Attorney at law.

180 Q. Where have you been practising?

A. Otoe County, Nebraska.

181 Q. For how long?

A. Twenty five years.

182 Q. In what Courts, Mr. Livingston?

A. District courts of Otoe County, Nemaha County; Cass County, Lancaster County and several others in the state and the State Supreme Court; the Federal Courts, and some of the courts of other states.

457 183 Q. Were you the sole attorney for the plaintiff in the case of Meyer vs. Supreme Lodge, Knights of Pythias.

A. I have been since the death of Mr. Churchill, who died immediately after the first trial of the case in this Court.

184 Q. Can you tell the Court when this case was originally begun in the District Court here?

A. In December, 1916.

185 Q. How many times has it been tried in the District Court?

Mr. Connell: It is understood and agreed that the objection heretofore made by the defendant shall apply to each and every question put to the witness, and to his answers to the same.

The Court: Overruled. Exception.

A. Twice.

186 Q. How many times in the Supreme Court?

A. Once.

187 Q. Prior to the first trial in the District Court, just what preparation, Mr. Livingston—what amount of preparation was necessary to get the case ready for trial?

A. It was necessary to make an exhaustive examination of the Constitution and records of the defendant Lodge and of the legal propositions involved and the preparation and filing of the petition.

188 Q. Were any depositions taken—foreign depositions,—before the trial of the first case?

A. Depositions were taken in Indianapolis, Indiana, after the trial of the case was begun, but before it was finally finished.

189 Q. Who attended for the plaintiff in taking those depositions?

A. I did myself, personally.

458 190 Q. What length of time was occupied in taking the depositions?

A. I was gone three days.

191 Q. In addition to the taking of the depositions was there any time spent in preparing the legal propositions or in briefing this case in the District Court, Mr. Livingston?

A. There was.

192 Q. Do you know what would be a fair and reasonable fee for the preparation and trial of this case the first time in the District Court, considering the research made and the time spent in preparing for trials?

A. I do.

193 Q. What, in your opinion, would be a fair value of the attorney's fees for the plaintiff in the preparation for and the trial of the first trial of this case in the District Court?

A. Four hundred dollars.

194 Q. Adverse judgment was rendered in the District Court in the first trial?

A. Yes sir.

195 Q. Who prepared and submitted the case for review in the Supreme Court on appeal?

A. Mr. Churchill and myself.

196 Q. You have the briefs there in your hand have you?

A. I have the brief on behalf of Meyer, the appellant.

197 Q. What, in your judgment, would be a fair attorney fee for the plaintiff in the trial of this case in the Supreme Court?

A. Two hundred dollars. In addition to preparing the briefs the case was argued orally by Mr. Churchill and myself in the Supreme Court.

459 198 Q. The result in the Supreme Court was a reversal of the judgment rendered in the District Court was it not?

A. Yes, sir.

199 Q. Was there any preparation made by you for the plaintiff for the second trial in the District Court?

A. There was some preparation made. All of that I did alone, personally. Mr. Churchill had died in the meantime.

200 Q. What in your judgment would be a fair fee for the work done at the second trial of this case in the District Court?

A. One hundred fifty dollars. I say that in view of the fact that we had the benefit of the previous preparation.

No cross-examination.

Witness excused.

460 I hereby certify that the foregoing, (comprising pages 404 to 410 inclusive) is Volume 3 of the Bill of Exceptions, composed of three volumes, each so respectively numbered, in the case of George O. Meyer, Plaintiff against The Supreme Lodge, Knights of Pythias, Defendant.

In witness whereof I have hereunto set my hand this 8th day of March, 1922. L. L. Turpin, Reporter.

I hereby certify that the foregoing is Volume 3 of the Bill of Exceptions allowed, settled and filed in the above entitled cause this day.

Dated this 8th day of March, 1922. John E. Miller, Clerk District Court. (Seal).

I hereby certify that the foregoing is Volume 3 of the Bill of Exceptions allowed and settled this day in the above entitled cause.

Dated this 8th day of March, 1922. James T. Begley, Judge of the District Court.

461 [Title omitted.]

462 And on the same day there was filed in the office of the Clerk of said Supreme Court a certain Præcipe, in the words and figures following, to wit:

463 In Supreme Court, State of Nebraska.

No. —.

GEORGE O. MEYER, Appellee,

vs.

SUPREME LODGE, KNIGHTS OF PYTHIAS, Appellant.

### PRAECIPE.

(Filed Mar. 30, 1922.)

Now comes Supreme Lodge Knights of Pythias, appellant in the above entitled cause and the party appealing said cause, and files with the Transcript of said cause this Præcipe and states as follows:

1st. That this is an appeal taken from judgment of the District Court of Otoe County, Nebraska rendered March 1st., 1922.

2nd. That said George O. Meyer was plaintiff, and the said Supreme Lodge Knights of Pythias was defendant in said action.

3rd. That the party appealing this action from the District Court of Otoe County, Nebraska, to the Supreme Court of the State of

Nebraska is Supreme Lodge Knights of Pythias, and that said George O. Meyer is the appellee.

Dated March 29th., 1922. W. J. Connell, Attorney for Appellant.

[Endorsement omitted.]

464 And on the same day, to wit, March 30, 1922, there was issued out of said Supreme Court of Nebraska by the Clerk thereof, a certain Notice of Appeal, which said Notice of Appeal was, on April 3, 1922, returned and filed in the office of the Clerk of the said Supreme Court of Nebraska with service thereof endorsed thereon, a copy of said Notice of Appeal with such service endorsed thereon, is in the words and figures following, to wit:

465

### NOTICE OF APPEAL.

(Filed Apr. 3, 1922.)

THE STATE OF NEBRASKA, ss:

To the sheriff of the County of Otoe:

You are hereby commanded to notify George O. Meyer that an appeal has been taken to the Supreme Court of the State of Nebraska by Supreme Lodge Knights of Pythias asking the reversal of a judgment against it rendered on the 1st day of March A. D. 1922, in a certain cause in the District Court of Otoe County, wherein George O. Meyer was Plaintiff, and Supreme Lodge Knights of Pythias was Defendant.

You will make due return of this notice on or before thirty days after the date hereof.

Witness my hand and the Seal of said Court, at the City of Lincoln, this 30th day of March 1922. H. C. Lindsay Clerk, by P. F. Green Deputy. (Seal.)

Service of the within Notice of Appeal acknowledged this 31st day of March, 1922. George O. Meyer, Appellee, by D. W. Livingston, Attorney.

[Endorsement omitted.]

466 And afterwards, to wit, on the 3d day of April, 1922, there was filed in the office of the Clerk of said Supreme Court of Nebraska a certain Bond for Costs, which was duly approved by the Clerk of said Court, and the following is a copy of said Bond and Approval thereof by the said Clerk:

467

[Title omitted.]

**BOND FOR COSTS.**

[Filed Apr. 3, 1922.]

Know all men by these presents, That we, Supreme Lodge Knights of Pythias, as principal, and James I. Kemp, as sureties, are held and firmly bound unto the Clerk of the Supreme Court in the sum of fifty dollars, for the payment of which well and truly to be made, we jointly and severally bind ourselves, our heirs, executors, administrators, and assigns.

Whereas, the above bounden Supreme Lodge Knights of Pythias has filed in the Supreme Court of Nebraska a Bill of Exceptions and transcript of the proceedings of the District Court asking the reversal of a judgment rendered against it in a certain cause in the District Court of Otoe County, Nebraska wherein George O. Meyer, was plaintiff, and Supreme Lodge Knights of Pythias, was defendant.

Now, therefore, The condition of this obligation is such that if the said Supreme Lodge Knights of Pythias shall pay all costs that may be made by or adjudged against it by said Supreme Court in said cause, then this obligation to be void, otherwise to remain in full force and effect.

Dated March 31st, 1922. Supreme Lodge Knights of Pythias, by W. J. Connell, Atty. James I. Kemp.

STATE OF NEBRASKA,

*Douglas County, ss:*

I, James I. Kemp being first duly sworn, depose and say that I have signed the within and foregoing bond as surety; that I am a resident freeholder of the State of Nebraska; that I own real estate and personal property to the value of at least \$5,000.00 over and above all liabilities and exceptions. James I. Kemp.

Subscribed in my presence and sworn to before me this 31st day of March 1922. Bessie James, Notary Public. (Seal.)

468 [Endorsement omitted.]

469 And afterwards, to wit, on the 2d day of May, 1922, there was filed in the office of the Clerk of said Supreme Court a certain Motion and Stipulation, in the words and figures following, to wit:

470 [Title omitted.]

**MOTION TO ADVANCE.**

[Filed May 2, 1922.]

Comes now the appellee and moves the Court to advance this cause for hearing for the reason that the same has been heretofore

regularly on the Docket in this Court; in support of this motion reference is made to the stipulation for advancement by the parties filed herewith. D. W. Livingston, Attorney for Appellee.

[Endorsement omitted.]

471

[Title omitted.]

### STIPULATION FOR ADVANCEMENT.

[Filed May 2, 1922.]

It is hereby stipulated by and between the parties to this action that whereas this case has been once regularly upon the docket of this Court and decided by this Court, then entitled Meyer vs. Supreme Lodge Knights of Pythias, and reported in volume 104 of the Nebraska Reports, also in 177 Northwestern at 828 and 80 Northwestern at 579, and under the rule should be advanced. It is therefore further stipulated by the parties hereto that this cause be advanced for hearing upon this stipulation and that notice of motion for such advancement to either of the parties be and hereby is expressly waived. D. W. Livingston, Attorney for Appellee. W. J. Connell, S. H. Esary, Attorneys for Appellants. April 28, 1922.

[Endorsement omitted.]

472

And on the same day there was rendered by said Supreme Court and entered of record upon the journal thereof, a certain Order in the words and figures following, to wit:

473

[Title omitted.]

### ORDER SETTING CAUSE FOR HEARING.

[Filed May 2, 1922.]

This cause coming on to be heard upon motion and stipulation of parties to advance, was submitted to the court; upon due consideration whereof, it is by the court ordered that said motion and stipulation be, and same hereby are, allowed; that cause be, and hereby is advanced and set for hearing at the session of court commencing September 18, 1922, that appellant serve and file briefs by June 1, 1922, and that appellee serve and file answer briefs by July 2, 1922. A. M. Morrissey, Chief Justice.

474

And afterwards, to wit, on the 26th day of June, 1922, there was filed in the office of the Clerk of said Supreme Court a certain Motion and Stipulation, in the words and figures following to wit:

475

[Title omitted.]

**MOTION FOR EXTENSION OF TIME.**

[Filed June 26, 1922.]

Comes now the Appellee and moves the Court for an order extending the time for the service and filing of Appellee's brief in the above entitled cause to August 1, 1922 in accordance with the stipulation herewith filed. D. W. Livingston, Attorney for Appellee.

476

[Title omitted.]

**STIPULATION FOR EXTENSION OF TIME.**

[Filed June 26, 1922.]

It is hereby stipulated and agreed by and between the parties hereto that the time for service and filing of appellee's brief herein be extended to August 1st, 1922. D. W. Livingston, Attorney for Appellee. W. J. Connell, Attorneys for Appellant.

[Endorsement omitted.]

477

[Title omitted.]

**ORDER EXTENDING TIME.**

This cause coming on to be heard upon motion of appellee and stipulation of parties for an extension of time within which to serve and file briefs, was submitted to the court; upon due consideration whereof, it is by the court ordered that said motion and stipulation be, and same hereby are, allowed and appellee given until August 1, 1922, to serve and file briefs. A. M. Morrissey, Chief Justice.

478

[Title omitted.]

**ARGUMENT AND SUBMISSION.**

Sept. 20.

The following causes were argued by counsel and submitted to the court:

\* \* \* \* \*

No. 22706. Meyer v. Supreme Lodge Knights of Pythias. Appeal, Otee.

\* \* \* \* \*

A. M. MORRISSEY,  
Chief Justice.



479

[Title omitted.]

**JUDGMENT.**

(Filed Oct. 4, 1922.)

This cause coming on to be heard upon appeal from the district court of Otoe county, was argued by counsel and submitted to the court; upon due consideration whereof, the court finds no error apparent in the record of the proceedings and judgment of said district court. It is, therefore, ordered and adjudged that said judgment of the district court be, and hereby is, affirmed at the costs of appellant, taxed at \$—; for all of which execution is hereby awarded, and that a mandate issue accordingly.

Opinion by Dean, J.

Letton, J., dissenting separately.

Flansburg, J., dissenting. A. M. Morrissey, Chief Justice.

480

And on the same day there was filed in the office of the Clerk of said Supreme Court a certain Opinion by said court, pursuant to which the preceding judgment was entered, which opinion is in the words and figures following, to wit:

481

[Title omitted.]

**OPINION.**

(Filed October 4, 1922.)

The record examined, and held the questions involved here are the same as those which were presented at the former hearing in the same case. Meyer v. Supreme Lodge, K. of P., 104 Neb. 505; on rehearing, p. 511. We adhere to our former decision.

482

Heard Before Morrissey, C. J.; Letton, Rose, Dean,  
Aldrich, Day, and Flansburg, JJ.

DEAN, J.: This case has been twice tried in the district court and twice appealed. In the first trial a jury was waived and the defendant society obtained a judgment. On appeal by plaintiff the judgment was reversed. Meyer v. Supreme Lodge, K. of P. 104 Neb. 505. Subsequently the defendant society filed a motion for rehearing. An argument on the motion was allowed, the rehearing was denied and the former decision adhered to. Meyer v. Supreme Lodge, K. of P., 104 Neb. 511. Plaintiff prevailed at the second trial, and defendant appealed.

To retain the exercise of governmental authority in the hands of the people is the modern trend. Extended argument is not needed to establish this fact. Witness the election of United States senators

by direct vote; the direct primary; and the initiative and referendum. Fraternal societies are no exception to the rule.

As noted in the former opinion, the defendant society was re-incorporated under an act of congress which provides: "That said corporation shall have a constitution, and shall have power to amend the same at pleasure; Provided, that such constitution or amendments thereof do not conflict with the laws of the United States or of any state." 28 U. S. St. at Large, ch. 119, sec. 4, p. 96.

In view of the language of the act in question, it follows that a fraternal society doing business in this state must conform to the law of this state on that subject. In the opinion on the motion for rehearing in the present case we said: "Will it be contended that a society so chartered may with impunity violate the settled policy of a state as declared by its court in the construction of its laws?"

483 The questions involved here are the same as those which were presented at the former hearing in the same case. Meyer v. Supreme Lodge, K. of P., 104 Neb. 505; on rehearing, p. 511. We adhere to our former decision. The judgment is affirmed.

### DISSENTING OPINION.

LETTON, L., dissenting: Being satisfied that the former decision was wrong, that defendant had a representative form of government and had power to change its rates; that the changes made were reasonable, and that this court should have given full faith and credit to the decisions of the federal courts applying to this federal corporation, I adhere to the views expressed in my dissenting opinion when the case was here before, reported in 104 Neb. 515, and must again dissent from the opinion of the majority.

Flansburg, J., also dissents.

484 And afterwards, to wit, on the 7th day of November, 1922, there was filed in the office of the Clerk of said Supreme Court a certain Motion for Rehearing, in the words and figures following, to wit:

485 [Title omitted.]

### MOTION FOR REHEARING.

(Filed Nov. 7, 1922.)

Now comes the appellant in the above entitled case, and within the time authorized and limited by the rules of this Honorable Court, and in accordance therewith, and makes reference to the opinion filed herein October 4th, 1922, files this its motion for a rehearing of this case, and presents and urges as the grounds and reasons for allowing and granting such re-hearing, the following, to-wit:

First. The statement in the majority opinion of the court that the questions involved on this appeal are "the same as those which were presented at the former hearing in this case" and which forms the basis for the affirmance of the judgment rendered herein by the majority opinion of the court, is immaterial and forms no basis or reasons whatever for the affirmance of said judgment; the question decided and not the questions presented is the only question that can properly be considered on this appeal as determined.

Second. The court on this appeal did not take into account or consider the undisputed fact that the only question decided on the former appeal, as shown by the opinion of Judge Dean, and as demonstrated in the brief for appellant, was that the body assuming to change the schedule of rates did not constitute a "representative form of government", and that such increase was therefore not enforceable in this state.

See opinion of Judge Dean, 104 Neb. p. 505.

See brief for appellant, pp. 8 and 9.

486 Third. That the court utterly failed to consider or determine on either of said appeals, the question and contention of appellant that the records and proceedings in the "Holt case" were final and conclusive, and were res judicata, and that under said judgment in said Holt case appellee was barred and estopped from maintaining said action.

See brief for appellant pp. 63 to 76.

Fourth. The court on this appeal, as well as the former appeal, failed to consider or determine the question and contention of appellant fully stated and set forth in its briefs that the judgment and decisions of the Federal courts were final and conclusive, and barred and estopped said appellee from maintaining this action, and that such failure so to do constituted "a failure of due process of law within the Constitution of the United States."

Fifth. That failing to so consider and determine that the judgment and decisions of the Federal Courts were final and conclusive and barred and estopped said appellee from maintaining this action would be and was in violation of Article Four, Section One, of the Federal Constitution providing that full faith and credit shall be given to the public acts, records, and judicial proceedings of every other state.

Sixth. That failing to so consider and determine that the judgment and decisions of the Federal Courts were final and conclusive and barred and estopped said appellee from maintaining this action was and is in violation of Section 905 of the Revised Statutes of the United States, requiring full faith and credit to be given by the courts of one state to the records, public acts, and judicial proceedings of the courts of all other states and of the United States.

Seventh. That the court on this appeal, failed to consider or determine the contention of appellant, fully presented in its brief, that the court below erred in denying and refusing to sustain the validity of the Supreme Statutes No. 482 of appellant, providing for an increase of rates, and in so doing, denied the authority of appel-

lant, under the Act of Congress creating the said appellant to enact such Statute 482.

487 Eighth. The court on this appeal, failed to consider or determine the contention of appellant, fully presented in its brief, that the court below erred in not holding and deciding that under the Charter of said appellant granted by the Congress of the United States, and under the decisions of the United States court that such decisions were binding on this court and all others of the State of Nebraska, and that under said Charter and decisions the said appellee was barred and estopped from maintaining this action.

Ninth. That the court on this appeal, failed to consider or determine that under the evidence in this cause and the law applicable to the facts, as shown by the testimony, the decision and judgment of the court below should have been in favor of said appellant.

Tenth. That the court on this appeal failed to consider and did not give effect to the decisions of the Supreme Court of the United States in the case of Supreme Lodge Knights of Pythias vs. Mims, 241 U. S. 574, and in the case of Supreme Lodge Knights of Pythias vs. Smyth, 245 U. S. 594.

Dated, November 6th, 1922. W. J. Connell, S. H. Esary, Attorneys for Appellant.

[Endorsement omitted.]

488

[Title omitted.]

## ORDER OVERRULING MOTION FOR REHEARING.

[Filed Nov. 20, 1922.]

This cause coming on to be heard upon motion of appellant for a rehearing herein, was submitted to the court; upon due consideration whereof, the court finds no probable error in the judgment of this court heretofore entered herein. It is therefore, ordered and adjudged that said motion for rehearing be, and hereby is, overruled and a rehearing herein denied. A. M. Morrissey, Chief Justice.

489 And afterwards, to wit, on November 23, 1922, a Mandate affirming the judgment of the district court of Otoe county herein was duly and regularly issued out of the Supreme Court of Nebraska to the District Court of Otoe county, Nebraska.

490 And afterwards, to wit, on December 5, 1922, there was filed in the office of the Clerk of said Supreme Court of Nebraska, a certain Motion and Stipulation for the recall of the mandate heretofore issued out of said Supreme Court in said case, and in re the use of the original bill of exceptions in the appeal of this case to the Supreme Court of the United States, which said Motion and Stipulation are in the words and figures following, to wit:

491

[Title omitted.]

**MOTION FOR RECALL OF MANDATE.**

[Filed Dec. 5, 1922.]

Now comes the appellant in the above entitled action and makes application to the court for an order for the return of the mandate and bill of exceptions in said case, by the Clerk of the District Court of Otoe County State of Nebraska, to the Clerk of this court, in pursuance of the stipulation of the parties, which is herewith submitted with this application, for the purpose of enabling the said appellant to obtain a completed record of the proceedings for the purpose of obtaining a review of the decision rendered by this Honorable Court in this case.

Dated, December 4th, 1922. W. J. Connell, Attorney for Appellant.

[Endorsement omitted.]

492

[Title omitted.]

**STIPULATION FOR RECALL OF MANDATE.**

[Filed Dec. 5, 1922.]

It is hereby stipulated and agreed that the mandate of the Supreme Court and the bill of exceptions recently returned to the Clerk of said District Court, may be forwarded by the Clerk of said District Court to the Clerk of the said Supreme Court, for the purpose of enabling counsel for the defendant to make application for a review of the decision of the Supreme Court rendered in said case, and it is further stipulated that in preparing the record for such review the Clerk of the Supreme Court may use the original bill of exceptions in place of a certified copy thereof.

Dated, November 29, 1922. D. W. Livingston, Attorney for Plaintiff. W. J. Connell, Attorney for Defendant.

Upon presentation of the foregoing motion and the above stipulation and due consideration thereof, it is ordered that the Clerk of said District Court of Otoe County be and he hereby is authorized and directed upon request of the Clerk of the Supreme Court to return to said Clerk the mandate and bill of exceptions for purpose as stated and set forth in said stipulation.

Dated, December 6th, 1922. James T. Begley, Judge.

[Endorsement omitted.]

493

[Title omitted.]

**ORDER RECALLING MANDATE.**

[Dec. 7, 1922.]

This cause coming on to be heard upon motion of appellant and stipulation of parties to recall mandate heretofore issued, and for leave to use the original bill of exceptions herein, as a part of the return to the Writ of Error to the Supreme Court of the United States, was submitted to the court; upon due consideration whereof, it is by the court ordered that said motion and stipulation be, and hereby are, allowed, said mandate ordered recalled, and the clerk of this court authorized to use the original bill of exceptions herein as a part of his return to the Writ of Error to the United States Supreme Court. A. M. Morrissey, Chief Justice.

494

And afterwards, to wit: on the 9th day of December, 1922, the original mandate of affirmance heretofore referred to issued by the Clerk of the Supreme Court of Nebraska to the District Court of Otoe county, was returned to me by the Clerk of the said District Court and the same is now in my possession as provided in the order of said Supreme Court of date December 7, 1922.

495

And afterwards, to wit, on January 25, 1923, there was filed in the office of the Clerk of the Supreme Court of Nebraska a certain Petition for a Writ of Error to the Supreme Court of the United States, which original Petition for a Writ of Error with the allowance thereof endorsed thereon by the Chief Justice of said Court, is hereto attached marked Exhibit "B" and forms a part of this my return to the writ of error herein.

496

[Title omitted.]

**PETITION FOR WRIT OF ERROR.**

[Filed Jan. 25, 1923.]

The petition of Supreme Lodge Knights of Pythias, by W. J. Connell and Sol H. Esarey, its attorneys, hereby set forth that on or about October 4, 1922, the Supreme Court of the State of Nebraska, made and entered a final order and judgment herein in favor of the said George O. Meyer, and against the said Supreme Lodge Knights of Pythias, and that on November 20, 1922, said Court overruled a petition for a rehearing therein, which petition was duly filed within the time allowed by law, and which was considered on its merits, in which final order and judgment and the proceedings prior thereto in this cause certain errors were committed to the prejudice of said Supreme Lodge Knights of Pythias, all of which will appear more in detail from the assignment of errors filed with this petition.

That the said Supreme Court of the State of Nebraska is the highest court of said State in which a decision in this action could be had and obtained.

Wherefore, said Supreme Lodge Knights of Pythias petitions and prays that a writ of error from the Supreme Court of the United States may issue in this behalf to the Supreme Court of the State of Nebraska for the correction of the errors so complained of, and that a transcript of record, proceedings, and papers in this cause, duly authenticated, may be sent to the said Supreme Court of the United States.

497 Dated this 25 day of January, 1923. W. J. Connell, 1019 S. 10th St., Omaha, Neb.; So. H. Esarey, 702 Pythian Bldg., Indianapolis, Ind., Attorneys for said Supreme Lodge Knights of Pythias.

STATE OF NEBRASKA, ss:

Supreme Court.

Let the writ issue upon the filing of a bond in the sum of \$4,000.00, the same when approved to act as a supersedeas.

Dated Jan. 25, 1923. A. M. Morrissey, Chief Justice.

[Endorsed:] 22706. Meyer v. Supreme Lodge, Knights of Pythias. Petition in error. Supreme Court of Nebraska. Filed Jan. 25, 1923. H. C. Lindsay, Clerk.

498 And on the same day, to wit, January 25, 1923, there was filed in the office of the Clerk of the Supreme Court of Nebraska, certain Assignments of Error, which original Assignments of Error marked Exhibit "C", are hereto attached and form a part of the return to the writ of error herein.

499 [Title omitted.]

### ASSIGNMENT OF ERRORS.

[Filed January 25, 1923.]

The Supreme Lodge Knights of Pythias in connection with its petition for a writ of error herein makes the following assignment of errors which said Supreme Lodge Knights of Pythias avers occurred in the final order and judgment herein, dated the 4th day of October 1922, and in overruling petition for a rehearing November 20, 1922.

First. The Supreme Court of the State of Nebraska erred in holding that the action of Supreme Lodge Knights of Pythias, as created by the act of the United States Congress, on June 29, 1894, 28 U. S. Statutes at Large, pp. 96, 97 in increasing the rates on its members in the insurance department, in 1910, effective January 1, 1911, was



and is invalid and void, and not binding on the members thereof who were and are citizens of the State of Nebraska.

Second. The Supreme Court of the State of Nebraska erred in holding that no legislation of said Supreme Lodge Knights of Pythias, affecting those of its members holding insurance certificates, is valid and effective unless the membership of said Supreme Lodge shall be composed entirely of members holding insurance certificates, and shall also be biennially elective by the members holding such insurance certificates, whereas, the federal statute creating said corporation (28 U. S. Statutes at Large, pp. 96, 97) makes no such restriction, and specially creates the "officers and members  
500 of the Supreme Lodge Knights of Pythias, and their successors," as a body corporate, giving certain enumerated powers thereto, one of which is to issue insurance certificates to those of its membership desiring same.

Third. The Supreme Court of the State of Nebraska erred in holding that the power to strike down the statutes enacted by said Supreme Lodge Knights of Pythias, inhered in the States, after the validity of said questioned statutes had been finally decided and held valid in two decisions of the Honorable, the Supreme Court of the United States.

Fourth. The Supreme Court of the State of Nebraska erred in refusing to give effect to the judgment and decree of the Honorable, the United States District Court for the District of Indiana, in the case of Joseph Holt, et al. v. Supreme Lodge Knights of Pythias, wherein several members of said order, who held insurance certificates therein, and who were similarly situate with the plaintiff herein in all respects and who brought said suit in their own behalf and in behalf of all others similarly situated, for the express object and purpose of having said statutes increasing the rates, which are the same statutes involved in this action set aside and held invalid and void, and to enjoin said Supreme Lodge Knights of Pythias from enforcing same, and which judgment and decree was appealed from, and affirmed by the Honorable Circuit Court of Appeals for the Seventh Circuit and by said Circuit Court of Appeals for the Seventh Circuit affirmed, which judgments and decrees are now in full force and effect.

Fifth. The Supreme Court of the State of Nebraska erred in holding that the plaintiff in this action was not bound by the judgment and decree of the District Court of the United States for the District of Indiana in the case of Joseph Holt, et al. v. Supreme Lodge Knights of Pythias, which suit was brought and maintained by said Joseph Holt and others, on behalf of themselves and of all others similarly situate, and wherein the validity of the supreme statutes of said Supreme Lodge Knights of Pythias, was affirmed and set at rest, the plaintiff herein, being similarly situate with the plaintiffs  
in said Holt case, \* \* \* and the same being a right  
501 guaranteed to the plaintiff in error under and by virtue of Article 4, Section 1, of the Federal Constitution, guaranteeing full faith and credit by one state to the judicial proceedings of every other state.

Sixth. The Supreme Court of the State of Nebraska erred in holding that the plaintiff in this action was not bound by the judgment and decree of the District Court of the United States for the District of Indiana in the case of Joseph Holt, et al. v. Supreme Lodge Knights of Pythias, which suit was brought and maintained by said Joseph Holt and others, on behalf of themselves and of all others similarly situate, and wherein the validity of the supreme statutes of said Supreme Lodge Knights of Pythias, was affirmed and set at rest, the plaintiff herein, being similarly situate with the plaintiffs in said Holt case, and the same being a right guaranteed to the plaintiff in error by virtue of Section 905 R. S. U. S., Section 1519 U. S. Comp. Stat. 1916, providing that the records and judicial proceedings of any state or territory, or of any such country, shall have such faith and credit given to them in every court within the United States as they may have by law or usage in the courts of the State from which they are taken.

Seventh. The Supreme Court of the State of Nebraska erred in holding that the plaintiff, being the defendant in error herein, is not estopped by virtue of his membership in said Supreme Lodge Knights of Pythias so created by federal statute, 28 U. S. Statutes at Large, pp. 96, 97, from again raising the question of the validity of the rates enacted by said Supreme Lodge Knights of Pythias in 1910, for the reason that Joseph Holt and others in their own behalf, and in behalf of all others similarly situate, including the defendant in errors assured, brought and maintained a suit for the purpose of declaring void the same statutes involved in this action, and wherein a judgment and a decree of the United States District Court for the District of Indiana was rendered that said statutes were valid and obligatory.

502 Eighth. The Supreme Court of the State of Nebraska erred in holding that the Supreme Lodge Knights of Pythias did not have and maintain, at the time of the enactment of the statutes in question, increasing the rates, a representative form of government, whereas it had and maintained at said time and ever, the same form of government which it had at its creation by federal statute, 28 U. S. Statute at Large pp. 96, 97.

Ninth. The Supreme Court of the State of Nebraska erred in holding that the Supreme Lodge Knights of Pythias did not have and maintain at the time of the enactment of the statutes in question, increasing the rates, a representative form of government, whereas it was alleged in the answer and shown by the evidence that said question was expressly decided adversely by the judgment and decree of the United States District Court for the District of Indiana, in the case of Joseph Holt and others against Supreme Lodge Knights of Pythias, wherein Joseph Holt and other- sued in their own behalf and in behalf of all others similarly situate, including defendant in error's assured, to set aside said statutes increasing the rates, as invalid and void.

The Supreme Court of the State of Nebraska which is the highest court in said State in which a decision in this action could be had

where was drawn in question the rights of the plaintiff in error under the federal act of 1894, 28 U. S. Statutes at Large, pp. 96, 97, creating the plaintiff in error, and the rights of plaintiff in error under Section 905 R. S. U. S. and under Article 4, section 1, of the federal constitution, and the question of estoppel of the defendant in error under the federal statute of 1894, 28 U. S. Statutes at Large, pp. 96, 97 and the question of the validity of the legislation of said plaintiff in error under the federal statute creating it, as affecting the members in the State of Nebraska.

503 The Supreme Lodge Knights of Pythias prays that a writ of error from the Supreme Court of the United States may issue to the Supreme Court of the State of Nebraska; and further prays that the Supreme Court of the United States will reverse the said final order and judgment of the Supreme Court of the State of Nebraska, and that the Supreme Lodge Knights of Pythias may be restored to all things and rights which it has lost by reason of the said final order and judgment; and that it may have such other and further relief as may be proper and just.

Dated this 25 day of January 1923. W. J. Connell, 1019 S. 10th St. Omaha, Neb.; Sol H. Esarey, 702 Pythian Bldg., Indianapolis, Ind., Attorneys for Supreme Lodge Knights of Pythias.

[Endorsed:] 22706. Meyer v. Supreme Lodge, Knights of Pythias. Assignment in error. Supreme Court of Nebraska. Filed Jan. 25, 1923. H. C. Lindsay, Clerk.

504 And on the same day, to wit, there was rendered by said Supreme Court and entered of record a certain Order allowing a writ of error to the United States Supreme Court to issue in this case and fixing supersedeas bond, which Order appears at page 278 of journal LL, and is in the words and figures following, to wit:

505 [Title omitted.]

### ORDER ALLOWING WRIT OF ERROR.

(Filed Jan. 25, 1923.)

The above entitled matter coming on to be heard upon the petition of the appellant therein for a writ of error from the Supreme Court of the United States to the Supreme Court of the State of Nebraska, and upon examination of said petition and the record in said matter, and desiring to give the petitioner an opportunity to present in the Supreme Court of the United States the questions presented by the record in said matter,

It is ordered that a writ of error be, and is hereby allowed to this Court from the Supreme Court of the United States, and that the bond in the sum of \$4,000 presented by said petitioner be, and the same is hereby approved. A. M. Morrissey, Chief Justice.

506 And on the same day there was filed in the office of the Clerk of said Supreme Court of Nebraska a certain Supersedeas

Bond in the sum of \$4,000, which Bond was duly approved by the Chief Justice of said Court. A copy of said Bond and the approval thereof marked Exhibit "D" is attached hereto and forms a part of the return to the writ of error herein.

507

[Title omitted.]

### BOND OF PLAINTIFF IN ERROR.

(Filed Jan. 25, 1923.)

Know all men by these presents that we, Supreme Lodge Knights of Pythias as principal and National Surety Company, as surety, are held and firmly bound unto George O. Meyer in the sum of Four Thousand Dollars, to be paid to said obligee, his successors, representatives and assigns, to the payment of which well and truly to be made, we bind ourselves, our heirs, executors and administrators, jointly and severally by these presents.

Scaled with our seals and dated this 25th day of January 1923.

Whereas, the above named plaintiff in error has prosecuted a writ of error in the Supreme Court of the United States to reverse the judgment rendered in the above entitled action by the Supreme Court of the State of Nebraska.

Now, therefore, the condition of this obligation is such that if the above named plaintiff in error shall prosecute its said writ of error to effect and answer all costs and damages if it shall fail to make good its plea, then this obligation shall be void, otherwise to remain in full force and effect. Supreme Lodge Knights of Pythias,

508 Insurance Department, by Harry Wade, President. W. A. Jenkins, General Secretary. (Seal.) National Surety Company, by W. H. Wheeler, Atty. in Fact.

Signed, sealed, and delivered in the presence of H. P. Williams.

STATE OF INDIANA,

*County of Marion, ss:*

On this 22<sup>nd</sup> day of January 1923, before me, personally appeared said Harry Wade and W. A. Jenkins, personally known to me to be respectively the President and General Secretary of said Supreme Lodge Knights of Pythias, Insurance Department, who acknowledged the execution of the above and foregoing bond on behalf of said corporation.

Witness my hand and official seal this 22<sup>nd</sup> day of January 1923. Harry C. Wilson, Notary Public. (Seal.) My Commission expires Jan. 5, 1927.

509 STATE OF ILLINOIS,

*County of Cook, ss:*

On this 23rd day of January 1923, before me personally appeared Harry Wade, personally known to me to be the President of said Supreme Lodge Knights of Pythias, Insurance Department, who ac-

knowledgeed the execution of the above and foregoing bond on behalf of said corporation.

Witness my hand and official seal this 23rd day of January 1923. Mame C. Brush, Notary Public. (Seal.) My Commission expires Apr 28th 1926.

510 STATE OF INDIANA,  
*County of Marion, ss:*

On this 22<sup>nd</sup> day of January 1923, personally appeared before me, Harry Wade and W. A. Jenkins, who, being duly sworn state that they are respectively the President and General Secretary of the Insurance Department of the Supreme Lodge Knights of Pythias; that the seal affixed to the foregoing instrument is the genuine corporate seal of said Department and that said instrument was signed on behalf of said corporation by authority of its Board of Control and the said Harry Wade and W. A. Jenkins, acknowledged said instrument to be the free act of said corporation. Harry C. Wilson, Notary Public. (Seal.) My Commission expires Jan. 5, 1927.

511 STATE OF NEBRASKA,  
*County of Douglas:*

On this 25th day of January 1923, personally appeared before me, W. H. Wheeler who, being duly sworn says that he is the Atty. in fact of said National Surety Company, that the seal affixed to the foregoing instrument is the corporate seal of said corporation, and that said instrument was signed and sealed on behalf of said corporation and by authority of its board of directors, and that the said W. H. Wheeler acknowledged the said instrument to be the free act and deed of said corporation. Roscoe C. Alexander, Notary Public. (Seal.)

I hereby approve the foregoing bond and sureties this 25th day of January 1923. A. M. Morrissey, Chief Justice of the Supreme Court of the State of Nebraska.

512 Know all men by these presents, that the National Surety Company, a New York Corporation, having its principal office in the City, County and State of New York, doth hereby make, constitute and appoint W. H. Wheeler and Geo. C. Cooper of Omaha all of the State of Nebraska its true and lawful Attorneys-in-Fact, with full power and authority hereby conferred to sign, execute, acknowledge and deliver in its name, place and stead, as surety, bonds, undertakings and writings obligatory in the nature thereof, for Administrators, Assignees, Conservators, Committees of Incompetents, Executors, Guardians, Trustees, Receivers, Special Commissioners and Trustees and Receivers in Bankruptcy Proceedings required to be given by any Statute, Order or Decree of any Court of the State of Nebraska or Iowa or in the Circuit or District Courts of the United States of America in said State (provided, however, that none of

above described bonds shall exceed \$10,000), and also all bonds upon Attachment, Garnishment, Injunction, Removal of Cause to Federal Courts, in Replevin, for Petitioning Creditors in Bankruptcy, for Non-Resident Plaintiffs and for Costs required to be given as aforesaid, or in the said Courts (provided, however, that none of such Attachment, Removal, Replevin, Garnishment, Injunction, Petitioning Creditors in Bankruptcy, Non-Resident Plaintiff or Cost Bonds shall exceed \$24,000) and when said bonds, undertakings and writings obligatory are signed by either the said W. H. Wheeler or the said Geo. C. Cooper as such Attorneys-in-Fact, to bind the Company as fully and to the same extent as if the same were signed by the President of the Company, sealed with its common seal, and duly attested by its Secretary; and the said Company hereby ratifies and confirms all the acts of the said Attorneys-in-Fact done pursuant to the power and authority herein given.

This Power of Attorney is made and executed in accordance with and by authority of the following By-Law adopted by the Board of Directors of the National Surety Company at a meeting duly called and held on the second day of February, 1909.

"Article XII. Resident Officers and Attorneys-in-Fact.

"Section 1. The President, First Vice-President or any other Vice-President may from time to time appoint Resident Vice-Presidents, Resident Assistant Secretaries and Attorneys-in-Fact to represent and act for and on behalf of the Company, and either the President, First Vice-President, or any other Vice-President, the Board of Directors or the Executive Committee may at any time remove any such Resident Vice-President, Resident Assistant Secretary or Attorney-in-Fact and revoke the power and authority given him.

"Section 4. Attorneys-in-Fact. Attorneys-in-Fact may be given full power and authority to execute for and in the name and on behalf of the Company, any and all bonds, recognizances, contracts of indemnity and other writings obligatory in the nature of a bond, recognizance or conditional undertaking, and any such instrument executed by any such Attorney-in-Fact shall be as binding upon the Company as if signed by the President and sealed and attested by the Secretary."

And, at a meeting of the Board of Directors of the National Surety Company, duly called and held on the Seventh day of March, A. D. 1912, a quorum being present, the following additional section to the foregoing By-Law was adopted:

"Section 6. Attorneys-in-Fact. Attorneys-in-Fact are hereby authorized to verify any affidavit required to be attached to bonds, recognizances or contracts of indemnity, policies of insurance and all other writings obligatory in the nature thereof, and are also authorized and empowered to certify to a copy of any By-Law contained in Article VI, XII and XIII of the By-Laws of the Company."

In Witness Whereof, the National Surety Company has caused these presents to be signed by its Vice-President and its corporate seal to be hereto affixed, duly attested by its Assistant Secretary, this

12th day of May, A. D. 1920. National Surety Company, by U. Slingluff, Vice-President. (Corporate Seal.) Attest: M. Crooke, Assistant Secretary.

Stamps affixed to first original and duly canceled.

STATE OF NEW YORK,

*County of New York, ss:*

On this 12th day of May, A. D. 1920, before me personally came U. Slingluff to me known, who, being by me duly sworn, did depose and say, that he resides in the City of New York; that he is the Vice-President of the National Surety Company, the corporation described in and which executed the above instrument; that he knows the seal of said corporation; that the seal affixed to the said instrument was such corporate seal; that it was so affixed by order of the Board of Directors of said Corporation, and that he signed his name thereto by like order. M. M. Miller, Notary Public. (Notarial Seal.)

STATE OF NEW YORK,

*County of New York, ss:*

I, R. A. Burke, Resident Assistant Secretary of the National Surety Company, do hereby certify that the above and foregoing is a true and correct copy of a power of attorney, executed by said National Surety Company, which is still in full force and effect.

In Witness Whereof, I have hereunto set my hand and affixed the seal of said Company, at the City of New York, this 12th day of July A. D. 1921. R. A. Burke, Resident Assistant Secretary. [Seal of the National Surety Company, New York.]

513 For use in New York State and other States which do not require published figures to conform to statement furnished the department of such State after audit by them.

National Surety Company, New York.

Wm. B. Joyce, President. Hubert J. Hewitt, Secretary.

*Financial Statement, December 31st, 1921.*

#### Assets.

*Liberty Bonds (including Employees' Unpaid Balances) .....	\$3,608,055.69
*Stocks and Bonds and Mortgages .....	15,716,168.94
Real Estate .....	17,279.70
Cash on Hand .....	1,276,885.62
Accounts Receivable .....	1,083,530.39
Outstanding Premiums .....	3,682,838.60
Accrued Interest .....	222,343.28
<b>Total .....</b>	<b>\$25,607,102.22</b>

\*Insurance Department Convention Values used.



## Liabilities.

Capital Stock .....	\$5,000,000.00
Surplus .....	5,763,247.22
Accounts Payable (Not Due) .....	477,174.39
Dividends Declared (Payable Jan. 3, 1922) .....	150,000.00
Accrued Commissions (Not Due) .....	720,278.16
For War Income Tax and Premium Tax .....	295,790.56
For Contingent Claims .....	3,823,878.78
For Unearned Premiums .....	8,804,039.70
Premium Over 90 Days Past Due .....	572,693.41
(The Company carries in addition hereto an unearned premium reserve of approximately \$286,346.00.)	
Total .....	\$25,607,102.22

STATE OF NEW YORK,  
County of New York, ss:

I, John L. Mee, Vice-President of the National Surety Company, do hereby certify that the above is a true statement of the assets and liabilities of said Company as of December 31st, 1921. John L. Mee, Vice-President. [Company's Seal.]

STATE OF NEW YORK,  
County of New York, ss:

Subscribed and sworn to before me, a Notary Public of the State of New York, in the City of New York, this 31st day of January A. D. 1922. Wm. M. Weaver, Notary Public for New York County, No. 40. [Notarial Seal.] Certificate filed in Kings, No. 77 Nassau, Queens, No. 468. Bronx No. 15 Richmond and Westchester Counties. New York County Register's office No. 2033. Kings County Register's office No. 2022. Bronx County Register's office No. 2235. My commission expires March 30, 1922.

514 And on the same day, to wit, January 25, 1923, there was issued out of the Supreme Court of the United States by the Clerk of the District Court of the United States for the District of Nebraska, a certain Writ of Error, which original Writ of Error is attached hereto marked Exhibit "E."

515

**WRIT OF ERROR.**

(Filed Jan. 25, 1923.)

UNITED STATES OF AMERICA, ss:

The President of the United States of America to the Honorable the Judge of the Supreme Court of the State of Nebraska, Greetings:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said Court before you, or

some of you, being the highest court of law or equity of the said State in which a decision could be had in the said suit between George O. Meyer and Supreme Lodge Knights of Pythias, a corporation, wherein was drawn in question the validity of a treaty or statute of, or an authority exercised under, the United States, and the decision was against their validity; or wherein was drawn in question the validity of a statute of, or an authority exercised under, said State, on the ground of their being repugnant to the Constitution, treaties, or laws of the United States, and the decision was in favor of their validity; a manifest error hath happened, to the great damage of the said Supreme Lodge Knights of Pythias, as by its complaint appears. We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same to the Supreme Court of the United States, together with this writ, so that you have the same in the said Supreme Court at Washington, within 30 days from the date hereof, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States, should be done.

Witness the Honorable William H. Taft, Chief Justice of the United States, the 25th day of January, 1923. R. C. Hoyt, Clerk of the District Court of the United States for the District of Nebraska, by J. H. McClay, Deputy Clerk. [Seal of the United States District Court, District of Nebraska, Lincoln Division.]

Allowed, January 25th, 1923. A. M. Morrissey, Chief Justice, Supreme Court of Nebraska.

[Endorsed:] 22706. Meyer v. Grand Lodge, Knights of Pythias. Writ of Error. Supreme Court of Nebraska. Filed Jan. 25, 1923. H. L. Lindsay, Clerk.

516 And on the same day, to wit, January 25, 1923, there was issued out of the Supreme Court of Nebraska a certain citation, which Citation was on the same day returned to the Clerk of said Supreme Court of Nebraska and filed in his office, with service thereof duly acknowledged. Said original Citation with service thereof endorsed thereon is attached hereto marked Exhibit "F" and forms a part of my return to the writ of error herein.

## 517 CITATION AND SERVICE.

(Filed Jan. 25, 1923.)

UNITED STATES OF AMERICA, ss:

George O. Meyer, Greeting:

You are hereby cited and admonished to be and appear at the Supreme Court of the United States at Washington, within thirty

days from the date hereof, on the 19th day of February 1923, pursuant to a writ of error filed in the Clerk's office of the Supreme Court of the State of Nebraska, wherein George O. Meyer is defendant in error and the Supreme Lodge Knights of Pythias is plaintiff in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error, as in the said writ of error mentioned, should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable, the Chief Justice of the Supreme Court of the state of Nebraska, this 25 day of January 1923. A. M. Morrissey, Chief Justice of the Supreme Court of the State of Nebraska.

A copy of the within citation received this 25 day of January 1923, and service thereof is hereby acknowledged. D. W. Livingston, Attorney for George O. Meyer, Defendant in Error.

[Endorsed:] 22706. Meyer v. Supreme Lodge, Knights of Pythias. Citation. Supreme Court of Nebraska. Filed Jan. 25, 1923. H. C. Lindsay, Clerk.

518 And on the same day, to wit, January 25, 1923, there was filed in the office of the Clerk of said Supreme Court of Nebraska, a certain Præcipe for this record, said original Præcipe, with acceptance of service thereof endorsed thereon, is hereto attached marked Exhibit "G" and forms a part of my return to the writ of error herein.

519

[Title omitted.]

### **PRAECIPE FOR COMPLETE RECORD.**

(Filed Jan. 25, 1923.)

To the Clerk of the Supreme Court of the State of Nebraska:

Now comes the appellant in the above entitled case, and being desirous of obtaining a review of the above entitled case by the United States Supreme Court, and a reversal of the judgment of the affirmance made and entered herein by this Honorable Court, makes and files this its præcipe for a complete and duly certified transcript of all the proceedings had and taken herein, and also a complete and duly certified record of the bill of exceptions and other records on file, and including all the orders relating thereto. W. J. Connell, S. H. Esarey, Attorneys for Appellant.

Nebraska City, Nebraska, Jan. 6", 1923.

Received a copy of the above præcipe and service thereof is hereby accepted. D. W. Livingston, Attorney for Appellee.

520

And on the same day, to wit, January 25, 1923, there was filed in the office of the Clerk of said Supreme Court of Ne-

braska, a certain Stipulation for the use of this record in certiorari proceedings to be instituted in the Supreme Court of the United States in this case. Said original Stipulation marked Exhibit "H" is hereto attached and forms a part of my return to the writ of error herein.

521

[Title omitted.]

**STIPULATION FOR RECORD.**

(Filed Jan. 25, 1923.)

It is hereby stipulated and agreed, by and between the parties to the above numbered and entitled cause —

Since the plaintiff in error in addition to the prosecution of a writ of error to the Supreme Court of the United States for the purpose of reviewing the final decree and judgment of the Supreme Court of the State of Nebraska entered herein October 4, 1922, and the overruling of plaintiff in error's petition for a rehearing on November 20, 1922, is also desirous of appealing said case by writ of certiorari to the said Supreme Court of the United States to review said judgments—

That the transcript of the record, proceedings and papers, which will be transmitted by the Clerk of said Supreme Court of the State of Nebraska pursuant to said writ of — may be treated, considered, and duly authenticated, as the transcript of the record, proceedings, and papers upon which said appeal is based and transmitted to said United States Supreme Court for its consideration in connection with said appeal which said transcript of record will be prepared in accordance with the pre-ecipe of the plaintiff in error therefor.

It is further understood and agreed that this stipulation or a copy thereof, shall be transmitted to the Supreme

Court of the United States as a part of the appeal papers and record in this cause. W. J. Connell, 1019 S. 10th St., Omaha, Neb.; Sol H. Esarey, 702 Pythian Bldg., Indianapolis, Ind., Attorneys for Plaintiff in Error. D. W. Livingston, Attorney for Defendant in Error.

[Endorsed:] 22706. Meyer v. Supreme Lodge, Knights of Pythias. Stipulation. Supreme Court of Nebraska. Filed Jan. 25, 1923. H. C. Lindsay, Clerk.

523

**CERTIFICATE OF LODGMENT.**

STATE OF NEBRASKA, ss:

Supreme Court.

I, H. C. Lindsay, Clerk of said Court, do hereby certify that there was lodged with me as such Clerk on January 25, 1923, in

the matter of George O. Meyer v. Supreme Lodge Knights of Pythias, No. 22706,

1. The original supersedeas bond of which a copy is herein set forth.

2. Two copies of the writ of error as herein set forth,—one for the plaintiff Meyer and one to file in my office.

In testimony whereof, I have hereunto set my hand and affixed the seal of said Court at my office in Lincoln, Nebraska, this January 27, 1923. H. C. Lindsay, Clerk Supreme Court, Nebraska. [Seal of Supreme Court of Nebraska.]

524

**AUTHENTICATION OF RECORD.**

STATE OF NEBRASKA, ss:

Supreme Court.

I, H. C. Lindsay, Clerk of said Court and custodian of the files and records thereof, do hereby certify that the foregoing pages numbered from 1 to 522, inclusive, are a true, full and complete transcript of the record and proceedings in the case of George O. Meyer, plaintiff, v. Supreme Lodge Knights of Pythias, defendant, and also of the opinion of the court rendered therein as the same now appear on file in my office.

And I further certify that Exhibit "A" attached hereto is the original bill of exceptions filed in said case in my office which Exhibit "A" forms a part hereof pursuant to stipulation of the parties included herein.

In testimony whereof, I have hereunto set my hand and affixed the seal of said court at my office in Lincoln, Nebraska, this January 27, 1923. H. C. Lindsay, Clerk Supreme Court, Nebraska. [Seal of Supreme Court of Nebraska.]

525

**RETURN TO WRIT OF ERROR.**

UNITED STATES OF AMERICA, ss:

Supreme Court of Nebraska.

In obedience to the commands of the within writ, I herewith transmit to the Supreme Court of the United States a duly certified transcript of the complete record and proceedings in the within entitled case, together with all things concerning the same.

In witness whereof, I hereunto subscribe my name and affix the seal of the Supreme Court of Nebraska in the City of Lincoln, this January 27, 1923. H. C. Lindsay, Clerk Supreme Court, Nebraska. [Seal of Supreme Court of Nebraska.]

## Fees:

For this record.....	10.60
3 cuts & seals.....	1.50
Binding .....	.75
Express .....	.50
	<hr/>
	13.35
Clerk costs on error proceedings.....	2.70
	<hr/>
	\$16.05

Paid by Plff. in error. H. C. Lindsay, Clerk.

526 & 527

[Title omitted.]

**STIPULATION TO CONSOLIDATE No. 832 WITH No. 833  
AND THAT RECORD IN No. 833 NEED NOT BE PRINTED.**

[Filed Feb. 17, 1923.]

It is hereby stipulated and agreed that the above named cause, and the cause No. 833, October Term 1922, being the case of Supreme Lodge Knights of Pythias, Petitioner v. Lena Eiser, Respondent may be consolidated and argued together and that the record in said No. 832 only shall be printed and that the said record in No. 832 shall be considered and treated as the record in No. 833.

Dated at Nebraska City, Neb., February 13, 1923. Sol H. Esarey, Attorney for Petitioner. D. W. Livingston, Attorney for Respondent.

528 [Endorsement omitted.]

Endorsed on cover: File No. 29,382. Nebraska Supreme Court. Term No. 832. Supreme Lodge, Knights of Pythias, plaintiff in error, vs. George O. Meyer. Filed February 6th, 1923. File No. 29,382.

(8682)

FEB 6 1923

WM. R. STAFFSBURY  
CLERK

IN THE

# Supreme Court of the United States

OCTOBER TERM, 1922.

No.

214

SUPREME LODGE KNIGHTS OF PYTHIAS,

*Petitioner,*

*vs.*

GEORGE O. MEYER,

*Respondent.*

PETITION FOR WRIT OF CERTIORARI AND PETI-  
TIONER'S BRIEF.

WARD H. WATSON,

SOL H. ESAREY,

*Attorneys for Petitioner.*





IN THE

# Supreme Court of the United States

OCTOBER TERM, 1922.

---

SUPREME LODGE KNIGHTS OF PYTHIAS,

*Petitioner,*

No. \_\_\_\_\_.

*vs.*

GEORGE O. MEYER,

*Respondent.*

---

## PETITION FOR WRIT OF CERTIORARI.

*To the Honorable, The Supreme Court of the United States:*

The Supreme Lodge Knights of Pythias, in support of this, its petition for a writ of certiorari to be directed to the Supreme Court of the State of Nebraska to review a judgment rendered by said Supreme Court of the State of Nebraska on the 4th day of October, 1922, and from the judgment of said Supreme Court of the State of Nebraska affirming and confirming said judgment, by its order overruling your petitioner's petition for a rehearing which was duly filed within the time provided by the statute of said state and which was duly considered and decided by said court on the 20th day of November, 1922, affirming the judgment and decree of the District Court of Otoe County in the said State of Nebraska, for the respondent herein,

who was the plaintiff, in the sum of \$——— respectfully shows:

1. That this action was begun by a complaint on behalf of the respondent against the petitioner upon a certificate of insurance, alleging that the respondent had executed to the assured a certificate of insurance in the sum of \$2,000; that the assured maintained his good standing in the order and that the respondent was designated in said certificate as the beneficiary thereof and that the petitioner agreed to pay said sum of \$——— upon satisfactory proof of the death of the assured; that the assured had done all things required of him to be performed, and that the defendant refused to pay said insurance or any part thereof. Judgment was demanded for the amount of the certificate together with attorney's fees.

2. That the defendant, your petitioner, duly filed its answer to said complaint alleging that it duly issued the certificate sued upon; that said defendant was duly authorized to transact business in the State of Nebraska. That said defendant was created by a special act of Congress and that its powers were given to it by virtue of said act of Congress; that it had been acting under said powers and by virtue thereof and that said powers can only be determined finally by the courts of the United States.

Said answer further admitted that the assured had died and further alleged that said certificate was not an absolute insurance on the life of the assured but that it was conditional and subject to the regular payment of monthly premiums to become due and to all changes in the laws of said defendant that might thereafter be enacted under and by virtue of said special act of Congress.

Said answer further alleged that neither the assured or any other person paid the assessments and dues required from said assured under the terms of said certificate from January, 1911, until the death of the assured. That by reason of the neglect and refusal of the assured to pay said assessments and dues said certificate became forfeited under the terms of the statutes of said defendant.

Said answer further alleged that under and by virtue of the right and power of said special act of Congress and the acts amendatory thereof the defendant promulgated and made an increase of rates of insurance and the amount required to be paid by the assured and of those of his class, which rates became effective January 1, 1911, and of which said assured was duly notified and informed; that said increase of rates was necessary for the maturing of the certificates held by the assured and all others who held certificates of insurance therein; that the defendant had the authority and power, to enact, adopt and pass the legislation and by-laws increasing said rates. That said rates were obligatory upon the assured therein as well as all others who were members of said Insurance Department; that said increase of rates and the action taken therein by said defendant were in the nature of internal regulations and management of the Insurance Department of said defendant, and were binding and obligatory upon the entire membership of said Insurance Departments regardless of where they lived, or the State in which they resided, and no member or class of members had any greater right or privilege than any other member or class of members, and that notwithstanding the duty and the obligation of the assured to pay the said rates, he purposely failed, neglected and refused to

pay any part of said dues or assessments from January 1, 1911, until his death April 11, 1916.

Said answer further alleged that the right and the power of the defendant to increase said rates were expressly adjudicated and determined and the validity of such rates was settled by a judgment and decree of the United States District Court for the District of Indiana, in a suit therein brought by Joseph Holt who was a member of said Insurance Department and held a certificate similar in all respects to the certificate of the assured which is involved in this action, and others on behalf of themselves and of all other members of said Department similarly situated against the defendant herein in which judgment it was finally decided and determined that the defendant herein had the right, power and authority to make such change and increase in its rates and that said increase was reasonable, proper and necessary, and that said defendant had a representative form of government at the time the said rates of insurance were increased; that the said Holt et al., plaintiffs in said suit were members of said Insurance Department in the same class as the assured herein. That said U. S. District Court had full power and jurisdiction of all matters involved in said suit and of the parties thereto and that its decision therein was final, conclusive, and *res judicata* of all matters involved in said suit, among which was the validity of the rates so fixed and the validity of all the laws enacted in reference to the increase of rates.

It was further alleged that by reason of said judgment and decree of said U. S. District Court for the District of Indiana, the assured herein and his beneficiary herein are barred and estopped from again litigating the question of the validity of said increase of rates or the question of the

representative form of government, or the obligation of the assured to pay said rates which questions are decisive of the questions involved in this case; that said decision remains in full force and effect, and is in no manner changed, modified or reversed, and which decision adjudged and finally determined that this defendant had and maintained a representative form of government at all times and that it had authority, right and power to increase its rates as alleged herein and that said increases were binding and effective on all its members and that a failure, neglect or refusal of any member to pay such increased rate resulted in and caused a forfeiture of his certificate of membership, the same having been finally approved and affirmed by the Supreme Court of the United States.

Said answer further alleged that said defendant claimed the benefits of Article 4, of Section 1, of the Federal Constitution guaranteeing full faith and credit to said judgment of the U. S. District Court for the District of Indiana, and also that it claimed the benefits of Section 905 revised statutes of the United States extending the full faith and credit clause of said Federal Constitution to the Courts of the United States, situated within the districts of the various states and also claims the right to have said judgment duly credited by the Courts of the State of Nebraska that said judgment had within the district of the United States District Court for the District of Indiana.

Said answer further alleged that the authority and power of said defendant to increase its rates and that said legislation was duly and validly enacted by said defendant at the time it so increased its rates was adjudicated and finally decided and determined by the Supreme Court of the United States on June 12, 1916, in a cause therein pending on writ

of error from the Court of Civil Appeals of the State of Texas, wherein the Supreme Lodge Knights of Pythias, being defendant, was plaintiff in error and Mims was defendant in error; that said Mims was a member of said defendant's Insurance Department of the same class as the assured herein; that said action in said Mims case was originally commenced in the District Court of Dallas County, State of Texas, May 19, 1911. That the plaintiff in said cause alleged that said increase of rates, being the same increase involved as in this action was alleged and that the law enacting such increase was wrongfully and illegally passed; that the answer of the defendant therein, being the defendant herein, alleged that said laws were just, reasonable and necessary, and that they were duly passed in accordance with the power and authority given under the Federal Statute creating the defendant and that the plaintiff's failure to comply with said laws caused a forfeiture of his insurance and his rights thereunder.

Said answer further shows that said cause was finally decided by the said Supreme Court of the United States which court had full power and jurisdiction over all matters involved in said suit and of the parties thereto, and that said laws were adjudged valid and binding upon all members of said Insurance Department, and the defendant herein alleged that said decision is decisive of the rights of the plaintiff herein, and that the plaintiff is barred and estopped from litigating said questions or denying the conclusiveness of said decisions in said case.

Said answer further alleged that the application of the assured herein and the certificate sued upon in this case were both conditioned upon the obligation of the assured to abide by and do all things required by the laws then in force



and the laws that might thereafter be enacted governing the Insurance Department. That the claim of the plaintiff herein is governed by and is dependent upon the defendant's charter of incorporation under said Federal Statute and the rules, laws and regulations adopted and promulgated by the defendant under and by virtue of said Federal Statute, and that the plaintiff is now estopped from denying or controverting the right of the defendant to enforce the rates so enacted and promulgated.

3. That the plaintiff in reply to said answer alleged that in this action there is not involved the construction of any Federal Statute, or any question arising under the laws of the United States which only the courts of the United States can determine; that the assured did not fail, neglect and refuse to pay the assessments required under his certificate at any time, and that his certificate did not become forfeited.

Said reply further alleged that said defendant was not empowered or given authority to make an increase of rates of insurance so as to affect the certificate of the assured, and further denied that any change of rates was made affecting or which was binding upon the assured at any other time, and further denied that any attempt to change the rates was ineffective and that the certificate so held by the plaintiff was in full force and effect at the death of the assured, and that no adjudication was ever had in any court binding upon plaintiff or upon the assured in his lifetime.

Said reply further alleged that in the case of *Meyer v. Supreme Lodge*, which case was appealed to the Supreme Court of the State of Nebraska and which involved the right, power and authority of the defendant to make, change or increase the rates of insurance, the validity of the rates

of the defendant and as to whether the defendant had a representative form of government, which case was decided April 30, 1920, the defendant was without any right, power or authority to make any change or increase of its rates and that said rates so made were void and that defendant did not have a representative form of government; that said judgment and opinion of said Supreme Court of the State of Nebraska is unreversed, and in full force and effect, and is *res judicata* of the questions raised in the defendant's answer.

4. That the record, a certified copy of which is presented herewith, shows no conflict of evidence the respondent relying solely upon the ground that the undisputed facts compel the legal conclusion that said increase of rates was invalid and void as to the plaintiff herein.

5. That the record shows that the assured held a certificate of insurance under date of 1885 and that he continued to pay the assessments and dues thereon until January 1, 1911; that he was then notified that an increase of rates had been enacted and that thereafter said increase of rates would be effective; that he refused to pay said increase and continued to tender his former rate to the Section Secretary whose duty it was to receive the assessment from the members of assured's lodge; that he continued to tender said old rate up to the time of his death; that the defendant refused to receive the said amount or any part thereof so tendered, but demanded the increased amount, which the assured refused to pay and denied the authority of the defendant to make an increase of the rates effective as against him.

It was further shown that in March, 1911, Joseph Holt and many others, in their own behalf and on behalf of all

others similarly situated brought a suit in the U. S. District Court for the District of Indiana, alleging that the legislation increasing the rates upon the members of the fourth class of which they were members and also the insured herein was invalid and void and that such legislation was a violation of their rights and prayed that said legislation be declared void and that the officers of the Insurance Department of the defendant be enjoined and restrained from enforcing any part of said legislation; that an answer was filed thereto and also a cross-complaint filed; that the issues so made in said cause involved the validity of all the legislation of the defendant affecting or increasing the rates of insurance upon any and all members of said Fourth Class.

Said record further shows that said cause was referred to a Master in Chancery to hear the evidence and to report the facts together with his conclusions thereon; that said Master did hear all the evidence on behalf of the plaintiffs and of the defendant, and that he made a report to the District Court of his finding of facts and his conclusions thereon; that among said facts so found were that the defendant was created by virtue of a Federal Statute; that its Supreme Lodge and law making body at the time of enacting said rates was the same and created the same as when said Federal Statute was enacted creating said defendant; that it had at that time and at all times theretofore mentioned a representative form of government; that it was properly acting within the powers given to it by virtue of said act of Congress being Act of June 29, 1894, 28 U. S. Statutes at large 96-97.

Said record further shows that said Master expressly found that said increase of rates was obligatory and binding upon all members of said Fourth Class, and that the rates

established in said legislation were reasonable, proper and necessary for the life of said Department, and for the maturing of the certificates outstanding as well as those to be issued. Said Master reported his conclusions thereon in favor of the defendant.

The record further shows that the court after hearing the arguments thereon and after considering the evidence and said findings held that the Master's findings were proper and that his conclusions were correct, and that he thereupon entered a decree and judgment in favor of the defendant and against the plaintiffs.

The record further shows that exceptions were filed to the Master's findings of facts and to his conclusions and that said District Court overruled said exceptions and that the plaintiffs appealed from said judgment and decree to the Circuit Court of Appeals for the Seventh Circuit and that said appeal was heard by said court and that the judgment of the District Court of the United States for the District of Indiana was affirmed on July 18, 1916, 149 C. C. A. 197, 235 Federal 883.

The record further shows that an appeal was taken from said judgment of the Circuit Court of Appeals for the Seventh Circuit, to the Supreme Court of the United States and that said appeal was dismissed October 21, 1918, 248 U. S. 588, 63 L. ed. 434.

The record further shows that the rates in force prior to January 1, 1911, were insufficient for the purpose and could not mature the policies outstanding; that the Insurance Department was in very embarrassing circumstances; that the disbursements were exceeding the income and that within a very few months the small surplus would have been exhausted; that the rates had theretofore been increased sev-

eral times and that many extra monthly assessments had been made; that the membership was becoming restless that the Supreme Lodge had gravely considered the matter of increase for sometime and that they had called an expert actuary who had examined their certificates and had advised them that the only way to prevent the destruction of the Insurance Department was to increase the rates; that they used as the basis of said increase the American Experience Table of Mortality and an interest assumption of  $3\frac{1}{2}\%$ ; that the rates established were based upon the attained ages of the members without medical examination; that all were treated exactly alike.

Said record further shows that the application of the assured, as well as the certificate in suit contained a provision that the assured will abide by the laws in force and by all laws subsequently enacted.

6. The court found in favor of the plaintiff for the amount of the certificate sued upon, together with attorney's fees and costs. From this judgment the defendant, your petitioner herein, appealed to the Supreme Court of the State of Nebraska, which affirmed the judgment of the District Court in favor of the respondent.

7. That the questions of law for the determination by the District Court were as follows:

(a) Was the assured, and his beneficiary, required by the laws, to observe and obey the Supreme Statutes of the defendant increasing the rates of insurance on the Fourth Class, of which he was a member?

(b) Did the Supreme Lodge of the defendant have the power, authority, and right under the Federal Statute of

June 29, 1894, 28 Statutes at large, pp. 96-97, to enact and promulgate the Supreme Statutes regulating and increasing the rates of insurance on the members of the Fourth Class?

(c) Was the Class suit by Joseph Holt and others against the defendant in this case, the petitioner herein, binding upon the assured herein?

(d) Did the District Court and later the Supreme Court give full faith and credit to said decision in their decision of the present case, as required by Article 4, Section 1, of the Federal Constitution?

(e) Did the District Court, and later the Supreme Court of the State of Nebraska give to the defendant therein, your petitioner, its right, as guaranteed by Section 905, Revised Statutes of the United States, giving effect to the judgment of the United States Court for the District of Indiana in the State of Nebraska the same as said judgment has in and for the said District of Indiana.

(f) Is the judgment of the United States District Court of Indiana *res judicata* of the question of representative form of government, validity of rates and duty of members of the Fourth Class in respect to the increase of rates.

(g) Does any member of said Fourth Class have the right again to contest the validity of the increase of rates in view of the decision of the United States District Court for the District of Indiana in said class suit of *Holt et al. v. Supreme Lodge Knights of Pythias* and in view of the decision of the United States Circuit Court of Appeals for the Seventh Circuit affirming said judgment, and of the dismissal of the appeal therefrom by the United States Supreme Court.

8. That the facts before stated under paragraph 5 were uncontradicted. The District Court of Nebraska held that the said statutes increasing the rates were void as to the plaintiff, the respondent herein, that the governing body of the defendant was not properly constituted and that no legislation enacted by the said body was valid or binding upon any member of the Insurance Department thereof in said State of Nebraska. That the judgment of the District Court of the United States for the District of Indiana was not *res judicata* as to any questions involved in this suit. The Supreme Court of the State of Nebraska held that the plaintiff was entitled to recover on the ground that the defendant did not have a representative form of government and that all legislation enacted by said body was invalid and void, and therefore, could not be enforced against the plaintiff; that said increased rates being invalid, did not affect the assured's right to the payment of his old rates and, therefore, that his certificate did not become forfeited and was valid and enforceable. That his rights were not affected by the judgment of the United States Court either in the Holt case or in the Mims or Smyth cases, and that those adjudications did not affect the plaintiff's rights.

9. The Supreme Court of the State of Nebraska in affirming and confirming, on rehearing its judgment and decree affirming the judgment of the District Court of Otoe County, erred in striking down the Supreme Statutes of your petitioner, which statutes were enacted pursuant to and in accordance with its powers granted under the Federal Act of June 29, 1894, 28 Statutes at large, pp. 96-97, for the reason that such Supreme Statutes have already been adjudicated and declared valid by your Honorable Court in



the cases of *Supreme Lodge Knights of Pythias v. Mims*, 241 U. S. 574, 60 L. ed. 1179. And the case of *Supreme Lodge Knights of Pythias v. Smyth*, 245 U. S. 594, 62 L. ed. 492, and the decision in the case of *Holt v. Supreme Lodge Knights of Pythias*, 149 C. C. A. 197, 235 Fed. 885.

10. That the Supreme Court of the State of Nebraska erred in refusing to extend full faith and credit, as required by Article 4, Section 1, of the Federal Constitution to the judgment and decree of the United States District Court for the District of Indiana in the Class suit of *Joseph Holt et al. v. The Supreme Lodge Knights of Pythias*, wherein suit was brought on behalf of the plaintiffs to have declared null and void the Supreme Statutes of your petitioner increasing the rates, being the same statutes involved in the present action, and wherein said District Court of the United States expressly held valid and obligatory all of said statutes.

11. That the Supreme Court of the State of Nebraska in affirming the judgment of the District Court of said State erred in failing to give effect, and full faith and credit as required by Article 4, Section 1, of the Federal Constitution of the powers, rights, and privileges to your petitioner herein as granted to it under and by virtue of the Federal Statute creating your petitioner, that is, the Act of June 29, 1894, 28 Statutes at large 96-97. The said statute having been judicially construed by the Honorable Supreme Court of the United States in the cases of *Supreme Lodge Knights of Pythias v. Mims*, 241 U. S. 574, 60 L. ed. 1179, and *Supreme Lodge Knights of Pythias v. Smyth*, 245 U. S. 594, 62 L. ed. 492.

12. That the Supreme Court of the State of Nebraska erred in refusing to give full faith and credit, as required by Section 905, R. S. U. S., to the judgment of the United States District Court for the District of Indiana, which expressly adjudicated the validity of the Supreme Statutes of your petitioner increasing its rates of insurance being the same statutes involved in the present action.

In the case of *Joseph Holt et al. v. Supreme Lodge Knights of Pythias*, which judgment and decree of said District Court was affirmed on appeal to the U. S. Circuit Court of Appeals of the Seventh Circuit (149 C. C. A. 197, 235 Fed. 885).

13. The Supreme Court of the State of Nebraska in affirming the judgment of the District Court of Otoe County, erred in refusing to hold that under its Federal charter, being the Federal Act of June 29, 1894, 28 Statutes at large, pp. 96-97, the governing body of said charter had the power, right and authority to enact the legislation involved in said action, increasing the rates of insurance upon its members.

14. That the Supreme Court of the State of Nebraska erred in failing to give full faith and credit to the judgment and decree of the United States District Court for the District of Indiana in the case of *Joseph Holt v. Supreme Lodge Knights of Pythias*, the same being a class suit brought by and on behalf of the plaintiff therein and all other members of the Fourth Class of said Insurance Department, including the assured in this case, wherein it was adjudged that the the Supreme Lodge Knights of Pythias had and maintained a representative form of government at the time of the enactment of the Supreme Statutes involved in this case increasing the rates of insurance.

Your petitioner insists that its defense to said action should have been sustained and that the judgment of the District Court of the United States of the District of Indiana, should have been given the full faith and credit to which it was entitled under Article 4, Section 1, of the Federal Constitution and of Section 905, R. S. U. S. extending full faith and credit to the judicial acts and records of the courts of other states, and that your petitioner's rights under its charter were unlawfully denied to it. Your petitioner presents herewith as a part of this petition its brief showing more fully its views upon the questions involved and also a transcript of the record of the Supreme Court of the State of Nebraska which brief and record are made part of this petition.

WHEREFORE, your petitioner respectfully prays that a writ of certiorari be issued out of and under the seal of this court, directed to the Supreme Court of the State of Nebraska, commanding said Court to certify and to send to this court, on a day certain to be therein designated, a full and complete transcript of the record and all proceedings of said Supreme Court in this case which was entitled in that court, *George O. Myer, Appellee, v. Supreme Lodge Knights of Pythias, Appellant*, to the end that said cause may be reversed by this court as provided by law, and that your petitioner may have such other and further relief or remedy in the premises as to this court may seem appropriate, and that said judgment of the Supreme Court of the State of Nebraska be reversed by this Honorable Court.

SUPREME LODGE KNIGHTS OF PYTHIAS,

By Harry Wade  
*President of Insurance Department.*

State of Indiana, }  
 County of Marion, } ss.:

Harry Wade, being duly sworn, says that he is the president of the Insurance Department of the Supreme Lodge of Knights of Pythias, that he has read the aforesaid petition by him subscribed and that the facts therein stated are true to the best of his information and belief.

Harry Wade

Subscribed and sworn to before me this 30 day of January, 1923.

Harry C. Nelson

Notary Public in and for said State of  
 Indiana.

My commission expires Dec. 5, 1926.

W. J. Connell

Edw. H. Erary

Attorneys for Petitioner.



IN THE

# Supreme Court of the United States

OCTOBER TERM, 1922.

---

SUPREME LODGE KNIGHTS OF PYTHIAS,	} No. _____.
<i>Petitioner,</i>	
vs.	
GEORGE O. MEYER,	<i>Respondent.</i>

---

## PETITIONER'S BRIEF.

The petitioner herein was created by act of Congress on June 29, 1894, 28 U. S. Statutes at Large, pp. 96, 97, Chap. 119. Said statute is as follows:

"An Act to incorporate the Supreme Lodge of the Knights of Pythias.

Be it enacted by the Senate and House of Representatives of the United States of America, in Congress assembled:

That Geo. B. Shaw, of the City of Eau Claire, State of Wisconsin; William W. Blackwell, of the City of Henderson, State of Kentucky; Walter B. Richie, of the City of Lima, State of Ohio; Robert L. C. White, of the City of Nashville, State of Tennessee; Philip T. Colgrove, of the City of Hastings, State of Michigan, and Tracy R. Bangs, of the City of Grand Forks, State of North Dakota, officers and members of the Supreme Lodge Knights of Pythias, and their successors, be and they are hereby incorporated and

made a body politic and corporate in the District of Columbia, by the name of "The Supreme Lodge Knights of Pythias," and by that name it may sue and be sued, plead and be impleaded, in any court of law or equity, and may have and use a common seal, and change the same at pleasure, and be entitled to use and exercise all the powers, rights and privileges incidental to fraternal and benevolent corporations within the District of Columbia.

Sec. 2. That the said corporation shall have the power to take and hold real and personal estate, not exceeding in value one hundred thousand dollars, which shall not be divided among the members of the corporation, but shall descend to their successors for the promotion of the fraternal and benevolent purposes of said corporation.

Sec. 3. That all claims, accounts, debts, things in action or other matters of business of whatever nature now existing for or against the present Supreme Lodge Knights of Pythias, mentioned in section 1 of this act, shall survive and succeed to and against the body corporate and politic hereby created; provided, that nothing contained herein shall be construed to extend the operation of any law which provides for the extinguishing of claims or contract by limitations of time.

Section 4. That said corporation shall have a constitution and shall have power to amend the same at pleasure; provided, that such constitution or amendments thereof do not conflict with the laws of the United States or of any State.

Section 5. That Congress may at any time amend, in any business for gain; the purpose of said corporation being fraternal and benevolent.

Section 6. That Congress may at any time amend, alter or repeal this act.

Approved June 29, 1894."



## 1.

A corporation created by a federal statute is "inherently entitled to invoke" the federal jurisdiction.

*Texas Pacific R. Co. v. Hill*, 237 U. S. 208, 59 L. Ed. 918;

*Texas Pacific R. Co. v. Marcus*, 237 U. S. 215, 59 L. Ed. 924;

*Supreme Lodge Knights of Pythias v. Mims*, 241 U. S. 574, 60 L. Ed. 1179;

*Supreme Lodge Knights of Pythias v. Smyth*, 245 U. S. 594, 62 L. Ed. 492.

## 2.

The proper construction of a federal statute is primarily for the federal courts; and the charter rights and powers of petitioner under its federal charter are for the final determination of the federal courts.

*Union Pacific R. Co. v. Myers*, 115 U. S. 1, 29 L. Ed. 319;

*Texas Pacific R. Co. v. Cody*, 166 U. S. 606, 41 L. Ed. 1132;

*Matter of Dunn*, 212 U. S. 387, 53 L. Ed. 563.

## 3.

The charter of a corporation as construed by the courts of its domicile or creation is the measure of its rights everywhere, and where a class suit is brought in the courts of the jurisdiction of the corporation's domicile, the judgment defining the rights of said corporation are obligatory every-

where under the full faith and credit clause of the federal constitution.

*Supreme Council Royal Arcanum v. Green*, 237 U. S. 531, 59 L. Ed. 1089;  
*Hartford Life Ins. Co. v. Ibs*, 237 U. S. 662, 59 L. Ed. 1165.

## 4.

Of necessity, the courts of the jurisdiction creating a corporation must constitute the final authority as to the validity of its rules, regulations, and by-laws.

*Clark v. Mutual Reserve Fund Life Assn.*, 14 App. Cas. (D. C.) 154, 43 L. R. A. 390;  
*Condon v. Mutual Reserve Fund Life Assn.*, 89 Md. 93, 44 L. R. A. 149, 73 Am. St. 169;  
*State v. Shain*, 245 Mo. 78, 149 S. W. 479.  
*Brenizer v. Supreme Council Royal Arcanum*, 141 N. C. 409, 5 L. R. A. N. S. 235, 53 S. E. 835;  
*Royal Fraternal Union v. Lunday*, 51 Tex. Civ. App. 637, 113 S. W. 185;  
*Taylor v. Mutual Reserve Fund Life Assn.*, 97 Va. 60, 46 L. R. A. 621.

## 5.

The case of *Holt, et al. v. Supreme Lodge Knights of Pythias*, was a class suit, having been brought and maintained by the complainants "in their own behalf and on behalf of all others similarly situated," in the United States District Court for the District of Indiana; and the judgment therein rendered, which was affirmed on appeal (See 149 C.

C. A. 197, 235 Fed. 885), is *res judicata* as to all matters therein alleged, one of which was that the Supreme Statutes of the order increasing rates was and is valid and obligatory, said judgment expressly holding said rates valid.

*Supreme Tribe Ben Hur v. Cauble*, 255 U. S. 356;  
*Supreme Council Royal Arcanum v. Green*, 237 U.

S. 531, 59 L. Ed. 1089;

*Hartford Life Ins. Co. v. Ibs*, 237 U. S. 662, 59 L. Ed. 1165.

## 6.

Although said judgment was specially pleaded in petitioner's answer and was introduced in evidence, the District Court of Otoe County failed and refused to give effect to said judgment, and the Supreme Court of the State of Nebraska in affirming said judgment failed and refused to give full faith and credit to said judgment as guaranteed by the Art. 4, Section 1, of the Federal Constitution and by Section 905, R. S. U. S.

*Hartford Life Ins. Co. v. Ibs*, 237 U. S. 662, 59 L. Ed. 1165;

*Supreme Council Royal Arcanum v. Green*, 237 U. S. 521, 59 L. Ed. 1089.

## 7.

Where the highest court of the jurisdiction creating the corporation being the United States Supreme Court in this case, has adjudicated the rights and powers possessed by a

corporation, it is the duty of other courts to follow such adjudication and to give effect to such powers.

*Supreme Council Royal Arcanum v. Green*, 237 U.

S. 531, 59 L. Ed. 1089;

*Hartford Life Ins. Co. v. Ibs*, 237 U. S. 662, 59 L.

Ed. 1165.

## 8.

Judgments of the Federal courts are entitled to full faith and credit in the state courts, the same as judgments of the state courts, under Art. 4, Sec. 1, of the federal constitution, and section 905, R. S. U. S.

*Hancock Nat. Bank v. Farnum*, 176 U. S. 645, 45 L.

Ed. 622;

*Union, etc., Bank v. Memphis*, 189 U. S. 75, 47 L.

Ed. 715;

*Metcalf v. City of Watertown*, 153 U. S. 671, 38 L.

Ed. 861.

## 9.

A judgment must be given the same force and binding effect in another state which it has in the state rendering such judgment.

*Hampton v. McConnell*, 3 Wheat. 234, 4 L. Ed. 378;

*Mills v. Durgee*, 7 Cranch 481, 3 L. Ed. 411;

*Fauntleroy v. Lum*, 210 U. S. 236, 52 L. Ed. 1042.

The plaintiff's assured having been a party to the Holt case, brought to declare void and illegal, all the supreme statutes of the petitioner, increasing the rates of insurance,

cannot now, after such rates have been held valid and obligatory, in such case, raise the question of the validity of such rates, even though a different ground therefor be alleged, which there is not.

*Holt County v. National Life Ins. Co.*, 25 C. C. A. 469, 80 Fed. 686;

*Dimack v. Revere Copper Co.*, 117 U. S. 559, 29 L. Ed. 994;

*Reynolds v. Mandel*, 175 Ill. 615, 51 N. E. 649;

*Bates v. Brodie*, 245 U. S. 526, 62 L. Ed. 444;

*Mitchell v. First Nat. Bank of Chicago*, 180 U. S. 471, 45 L. Ed. 627;

*Union Pacific R. Co. v. Wyler*, 158 U. S. 285, 39 L. Ed. 983;

*Boston, etc., R. Co. v. Hurd*, 47 C. C. A. 615, 108 Fed. 116, 56 L. R. A. 193.

In view of the foregoing provisions of our federal constitution, and statutes, and the uniform adjudications thereunder; and under our system of government and the application of our federal and state laws, your petitioner has not received its legal rights, and is entitled to a reversal of the judgment of said Supreme Court of Nebraska.

Respectfully submitted,



*Attorneys for Petitioner.*



DEC 24 1923

WM. R. STANSBURY  
CLERK

No. 214.

IN THE

# Supreme Court of the United States

OCTOBER TERM, 1923.

---

SUPREME LODGE KNIGHTS OF PYTHIAS,  
*Plaintiff in Error,*

*v.*

GEORGE O. MEYER,  
*Defendant in Error.*

---

IN ERROR TO THE SUPREME COURT OF THE STATE OF  
NEBRASKA.

---

*BRIEF OF PLAINTIFF IN ERROR.*

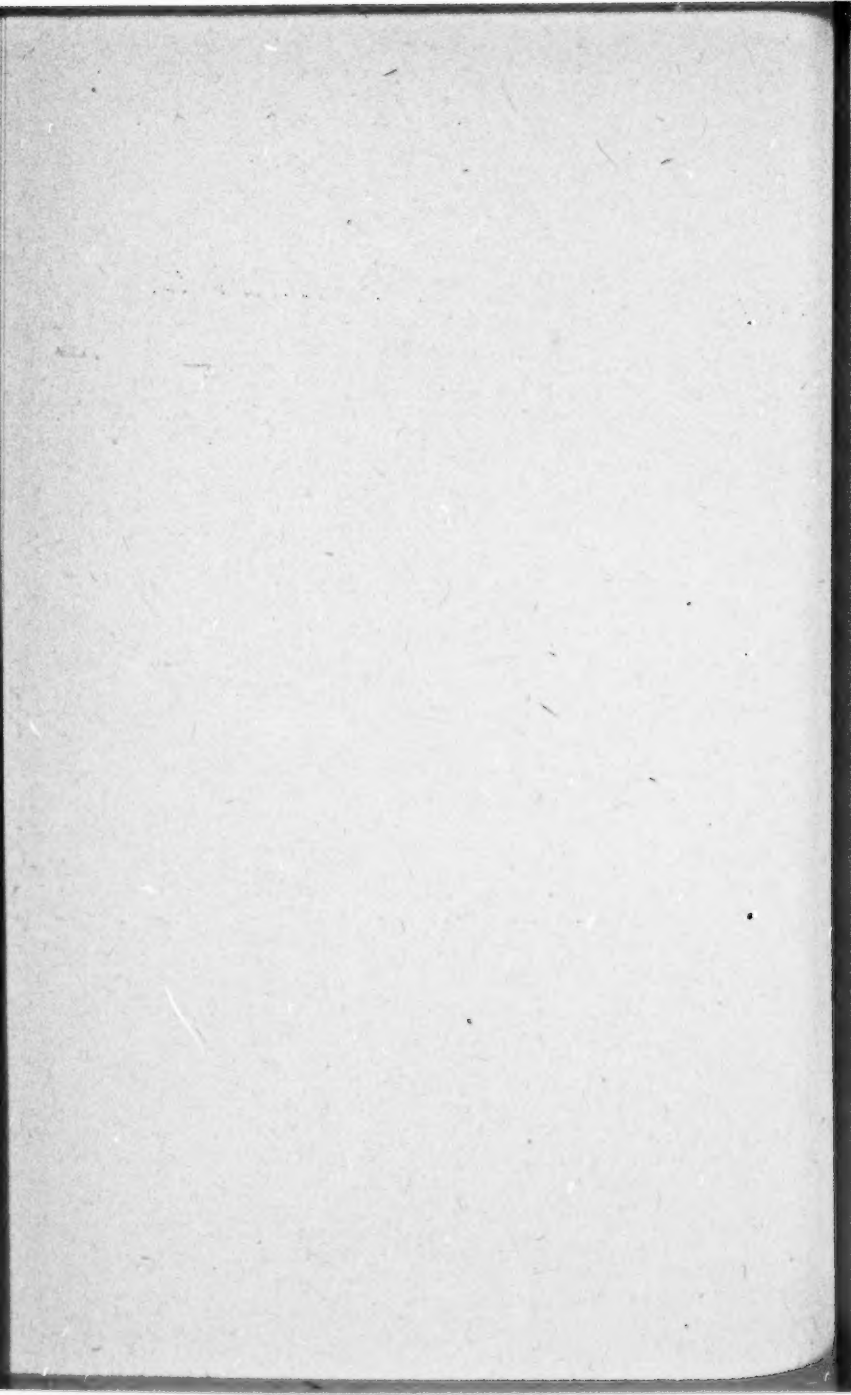
---

T. P. LITTLEPAGE,  
W. J. CONNELL,  
GEORGE A. BANGS,  
SOL H. ESAREY,  
WARD H. WATSON,  
*Attorneys for Plaintiff in Error.*

---

E. A. HARDIN PRINT, INDIANAPOLIS.





# INDEX.

	PAGE
Amended Answer -----	2
Assignment of Errors -----	26-30
Bangs, Geo. A., Testimony of -----	24, 25
Evidence -----	10
Holt Case -----	14-20, 59
Judgment -----	9
License from Nebraska -----	71
Mim's Case -----	61
Points and Authorities -----	31
Powers, Walter O., Testimony of -----	22-23, 25-26
Rate Litigation -----	58
Smyth Case -----	62
Statement of Case -----	1
Supreme Lodge, Act Incorporating -----	11-12
Supreme Constitution -----	20-21

# TABLE OF CASES.

PAGE

## A

<i>Alkine Grocery Co. v. Richesin</i> , 91 Fed. 79, 83-----	48
<i>American Mutual Life Ins. Co. v. Mason</i> , 159 Ind. 15, 16, 18 N. E. 525-----	50
<i>Alerding v. Allison</i> , 170 Ind. 252, 258, 83 N. E. 1006, 127 Am. St. 363-----	42, 52
<i>Andrews Bros. Co. v. Youngstown Coke Co.</i> , 86 Fed. 585, 596, 30 CCA 293-----	43

## B

<i>Bacon v. Robertson</i> , 18 How. 480 15 L. ed. 499-----	41, 44
<i>Ballard v. Franklin Life Ins. Co.</i> , 81 Ind. 239-----	52
<i>Bank v. Wheeler</i> , 28 Conn. 439, 73 Am. Dec. 684-----	50
<i>Barras v. Bidwell</i> , 3 Woods 7, Fed. Cas. No. 1039----	50
<i>Bates v. Bodie</i> , 245 U. S. 520, 526, 62 L. ed. 444----	42, 44, 68
<i>Bauer v. Sampson Lodge Knights of Pythias</i> , 102 Ind. 262-----	31, 38, 55
<i>Beard v. Federy</i> , 70 U. S. 478-----	33
<i>Beck v. Devereux</i> , 9 Neb. 109, 2 N. W. 365-----	46
<i>Bell County, etc., School v. Pineville Graded School</i> , 19 Ky. Law Rep. 789, 42 S. W. 92-----	42, 67
<i>Benes v. Supreme Lodge Knights and Ladies of Honor</i> , 231 Ill. 134, 83 N. E. 127-----	32
<i>Bernheimer v. Converse</i> , 206 U. S. 516, 51 L. ed. 1163--	54
<i>Board of Commissioners of Lake County v. Platt</i> , 79 Fed. 567, 25 CCA 87-----	43, 68
<i>Boston, etc., R. Co. v. Hurd</i> , 108 Fed. 116, 47 CCA 615, 56 LRA 192-----	44
<i>Bradley v. Dels Lbr. Co.</i> , 105 Wis. 245, 252, 81 N. W. 396-----	33

	PAGE
<i>Brenizer v. Supreme Council Royal Arcanum</i> , 141 N. C. 409, 6 LRANS 235, 53 S. E. 835-----	36
<i>Burgess v. Gray</i> , 57 U. S. 48-----	33
C	
<i>Cannon v. Castleman</i> , 162 Ind. 6-8, 69 N. E. 455-----	43, 52
<i>Christmas v. Russell</i> , 5 Wall. 290, 18 L. ed. 475-----	51
<i>Choouteau v. U. S.</i> , 34 U. S. 137-----	34
<i>Cincinnati, etc., R. Co. v. Wynne</i> , 14 Ind. 385-----	49
<i>Clark v. Mutual Reserve Fund Life Association</i> , 14 App. Cas. (D. C.) 154, 43 LRA 390-----	35, 36
<i>Cockburn v. Thompson</i> , 16 Ves. 321, 326, 328, 33 E. R. 1005 -----	41, 44
<i>Columbus v. Webster Mfg. Co.</i> , 84 Fed. 592, 28 CCA 225, 43 LRA 195-----	44
<i>Commonwealth v. Massachusetts Mutual Ins. Co.</i> , 112 Mass. 116 -----	39
<i>Condren v. Mutual Reserve Fund Life Association</i> , 89 Md. 99, 44 LRA 149, 73 Am. St. 169, 42 Atl. 944--	35, 36
<i>Conner v. Supreme Commandery Golden Cross</i> , 117 Tenn. 549, 97 S. W. 306-----	39
<i>Connoyer v. Schaeffer</i> , 89 U. S. 254-----	33
<i>Cotter v. Boston, etc., St. R. Co.</i> , 190 Mass. 302, 76 N. E. 910 -----	44
<i>Converse v. Ayer</i> , 197 Mass. 443, 84 N. E. 98-----	53
<i>Converse v. Hamilton</i> , 224 U. S. 243, 56 L. ed. 749-----	51, 54
<i>Crescent City, etc., Co. v. Butcher's Union, etc.</i> , 120 U. S. 141, 157, 30 L. ed. 614, 617-----	49
<i>Crouse v. Holman</i> , 19 Ind. 30, 36-----	52
<i>Daughtry v. Supreme Lodge Knights of Pythias</i> , 48 La. Ann. 1203 -----	31
<i>Dimock v. Revere Copper Co.</i> , 117 U. S. 559, 566, 29 L. ed. 994 -----	42, 43, 45

## D

	PAGE
<i>Dornes v. Supreme Lodge Knights of Pythias</i> , 75 Miss.	
466, 23 So. 191-----	2
<i>Dowell v. Applegate</i> , 152 U. S. 327, 345, 38 L. ed. 463	42, 43
<i>Duvall v. Synod of Kansas</i> , 222 Fed. 669, 138 CCA	
217-----	41, 42
<i>Dupasseur v. Rochereau</i> , 21 Wall. 130, 135, 22 L. ed.	
588, 590-----	43

## E

<i>Eberhard v. Northwestern Mutual Life Ins. Co.</i> , 210	
Fed. 520-----	34
<i>Ebert v. Mutual Reserve Fund Life Association</i> , 81	
Minn. 116, 83 N. W. 506, 834, 84 N. W. 457-----	35
<i>Elwood v. Beymer</i> , 100 Ind. 504-----	35
<i>Embry v. Palmer</i> , 107 U. S. 3, 27 L. ed. 346-----	41
Equity Rule 38, U. S. Sup. Ct. 1912, 226 U. S. 659, 57	
L. ed. 1643-----	41, 42

## F

<i>Fauntleroy v. Lum</i> , 210 U. S. 230, 52 L. ed. 1039-----	50, 71
<i>Fletcher v. Ferrel</i> , 9 Dana (Ky.) 377, 35 Am. Dec. 148	51
<i>Fidler v. Gilchrist</i> , 60 Ind. App. 363, 109 N. E. 796---	49
<i>Finley v. Cathcart</i> , 149 Ind. 470, 477, 48 N. E. 586, 49	
N. E. 381-----	51
<i>First National Bank v. City of Covington</i> , 129 Fed.	
792, 804-----	49
<i>Fischli v. Fischli</i> , 1 B. & C. 360, 12 Am. Dec. 251-----	42, 53
1 Foster, Federal Practice (6th Ed.), § 114-----	41, 42
<i>Franke v. Franke</i> , 15 Ind. App. 529, 549-----	49
<i>French v. Fyan</i> , 93 U. S. 169, 23 L. ed. 812-----	71
<i>Fullenwider v. Supreme Council Royal League</i> , 180	
Ill. 621, 54 N. E. 485, 72 Am. St. 239-----	38, 39

V

G

	PAGE
<i>Gaines v. Supreme Council Royal Arcanum</i> , 140 Fed.	
978 -----	36
<i>Gilmore v. Knights of Columbus</i> , 77 Conn. 58, 58 Atl.	
223, 107 Am. St. 17, 1 Am. & Eng. Ann. Cas.	
715 -----	39
<i>Glencoe Granite Co. v. City Trust, etc., Co.</i> , 118 Fed.	
383, 55 CCA 212 (certiorari denied, 187 U. S.	
649, 47 L. ed. 348) -----	48
<i>Goss v. Carter</i> , 156 Fed. 746, 84 CCA 402 -----	54
<i>Grand Island, etc., R. Co. v. Baker</i> , 6 Wyo. 394, 71 Am.	
St. 943, 34 LRA 835, 841 -----	46
<i>Gregory v. Molesworth</i> , 3 Atkins 626, 26 E. R. 1160 --	43
<i>Griffin v. Wallace</i> , 66 Ind. 410, 417 -----	43
<i>Grosvenor v. United Society of Believers</i> , 118 Mass.	
78, 90 -----	31

H

<i>Hadacheck v. Chicago, etc., R. Co.</i> , 74 Neb. 385, 104	
N. W. 878 -----	49
<i>Hampton v. McConnel</i> , 3 Wheat. 234, 4 L. ed. 378, note	
top page 804 -----	49, 71
<i>Hancock National Bank v. Farnum</i> , 176 U. S. 640, 45	
L. ed. 619 -----	48, 49
<i>Harmon v. Auditor</i> , 123 Ill. 132, 5 Am. St. 506, 13 N.	
E. 161, 164 -----	45
<i>Harris v. Harris</i> , 36 Barb. 88 -----	42
<i>Harshman v. Knox County</i> , 122 U. S. 306,, 317, 30 L.	
ed. 1152 -----	42, 45
<i>Hartford Life Ins. Co. v. Barber</i> , 245 U. S. 146, 62 L.	
ed. 208 -----	38
<i>Hartford Life Ins. Co. v. Ibs</i> , 237 U. S. 662, 59 L. ed.	
1165, LRA 1916A, 765 -----	37, 38, 41, 45, 65, 66

13 Harvard Law Review 67 (Historical Survey of Prof. Dicey) -----	
<i>Haydel v. Dufresne</i> , 58 U. S. 23-----	
<i>Henderson v. Henderson</i> , 3 Hare 100, 67 E. R. 313----	
<i>Hilgersen v. Hicks</i> , 201 Ill. 374, 66 N. E. 360-----	
<i>Hoefgen v. Harness</i> , 148 Ind. 224, 229, 47 N. E. 470--	
<i>Holt County v. National Life Ins. Co.</i> , 80 Fed. 686, 25 CCA 469 -----	43, 5
<i>Holt v. Supreme Lodge Knights of Pythias</i> , 235 Fed. 885, 149 CCA 197, 248 U. S. 588, 63 L. ed. 434----	40, 5
<i>Howard v. Mutual Reserve Fund Life Association</i> , 125 N. C. 49, 45 LRA 853, 34 S. E. 199-----	35,
<i>Howarth v. Lombard</i> , 175 Mass. 570, 56 N. E. 888, 49 LRA 301 -----	

## I

<i>Indiana, etc., R. Co. v. Allen</i> , 113 Ind. 581, 587-----	
<i>Irvine v. Baker</i> , 225 Fed. 834-----	

## J

<i>Johnson v. Libby</i> , 111 Me. 204, 88 Atl. 647, Ann. Cases 1916C 681 -----	
<i>Johnson v. Payne</i> , 11 Neb. 269, 9 N. W. 81-----	
<i>Jordan v. Van Epps</i> , 85 N. Y. 427, 436-----	

## K

<i>Kenney v. Supreme Lodge of the World, Loyal Order of Moose</i> , 252 U. S. 411, 64 L. ed. 638, 10 ALR 716	
<i>Kent v. Quicksilver Mining Company</i> , 78 N. Y. 159--	
<i>King v. Cochrane</i> , 76 Vt. 141, 56 Atl. 667, 104 Am. St. 922 -----	



	PAGE
<i>Kloke v. Gardels</i> , 52 Neb. 117, 71 N. W. 955-----	43
<i>Knotts v. Clark Construction Co.</i> , 131 N. E. (Ind.) 921	52
<i>Kocher v. Supreme Council Catholic Benevolent Le-</i> <i>gion</i> , 65 N. J. L. 649, 48 Atl. 544, 86 Am. St. 687, 52 LRA 861 -----	82

## L

<i>Laker v. Royal Fraternal Union</i> , 95 Mo. App. 353, 74 S. W. 705 -----	82
<i>Lee v. Johnson</i> , 116 U. S. 48-----	34
<i>Looney v. Eastern Texas R. Co.</i> , 247 U. S. 214, 62 L. ed. 1084 -----	41, 45
<i>Lovell v. St. Louis Mut. Life Ins. Co.</i> , 111 U. S. 264, 28 L. ed. 423 -----	41

## M

<i>Mandeville v. Riggs</i> , 2 Pet. 482-----	41, 44
<i>Marshall v. Stewart</i> , 80 Ind. 189-----	52
<i>Martin v. Abbott</i> , 1 Neb. (Unof.) 59, 95 N. W. 356----	43
<i>Mashlonpah v. Mayhew</i> , 138 Wis. 561, 119 N. W. 826--	46
<i>Maynard v. Waidlich</i> , 156 Ind. 562, 573, 60 N. E. 348--	52
<i>Mayor of Davenport v. United States, ex rel.</i> , 76 U. S. 409, 19 L. ed. 704-----	46
<i>Mazzariello v. Doherty</i> , 204 Fed. 245, 122 CCA 513----	44, 69
<i>McIntire v. Williamson</i> , 63 Kan. 279, 65 Pac. 244-----	43
<i>Metcalf v. City of Watertown</i> , 153 U. S. 671, 38 L. ed. 861 -----	48
<i>Miller v. National Council Knights and Ladies of Se-</i> <i>curity</i> , 69 Kans. 234, 76 Pac. 830-----	39
<i>Mills v. Durgee</i> , 7 Cranch 481, 3 L. ed. 411, note top page 576 -----	50
<i>Mitchell v. First National Bank of Chicago</i> , 180 U. S. 471, 45 L. ed. 627 -----	42, 44, 69

	PAGE
<i>Modern Woodmen of America v. Tevis</i> , 117 Fed. 369--	39
<i>Morris v. Burgess</i> , 116 N. C. 42, 21 S. E. 26-----	50
<i>Mutual Assurance Society v. Korn</i> , 7 Cranch 396, 3 L. ed. 383 -----	38

## N

<i>National Circle, Daughters of Isabella v. National Or- der Daughters of Isabella</i> , 270 Fed. 723-----	44
<i>Naualis v. Philadelphia, etc., Co.</i> , 270 Fed. 93, — CCA -----	46
<i>Neuman v. Supreme Lodge Knights of Pythias</i> , 110 Miss. 371, 70 So. 241, LRA 1916C, 1051-----	63
<i>New Dunderberg Mining Co. v. Old</i> , 79 Fed. 598, 25 CCA 116 -----	33
<i>Noble v. Union River Logging R. Co.</i> , 147 U. S. 165 172 -----	34, 75
<i>Northern Assurance Company v. Grand View Build- ing Assn.</i> , 203 U. S. 106, 51 L. ed. 109-----	48
<i>Norton v. Catholic Order of Foresters</i> , 138 Ia. 464, 114 N. W. 893, 24 LRANS 1030-----	40
<i>Note</i> , 31 LRANS 416-417-----	39

## O

<i>Old Dominion Copper, etc., Co. v. Bigelow</i> , 203 Mass. 159, 40 LRANS 314, 89 N. E. 193-----	48
--	----

## P

<i>People v. Brotherhood of Painters, Decorators and Pa- perhangers of America</i> , 218 N. Y. 115, 112 N. E. 752 -----	35
<i>People v. Detroit, etc., R. Co.</i> , 157 Mich. 144, 121 N. W. 814 -----	46

	PAGE
<i>People v. St. George's Society</i> , 28 Mich. 261-----	55
<i>Pfister v. Gerwig</i> , 122 Ind. 567-----	32
<i>Pierce v. Equitable Life Assurance Society</i> , 145 Mass. 56, 1 Am. St. 433, 12 N. E. 858-----	35
<i>Pittsburgh, etc., R. Co. v. Long Island Loan, etc., Co.</i> , 172 U. S. 493, 43 L. ed. 528-----	49

## R

<i>Ralls County v. United States, ex rel.</i> , 105 U. S. 733 26 L. ed. 1220-----	46
<i>Reynolds v. Mandel</i> , 175 Ill. 615, 51 N. E. 649-----	43
<i>Reynolds v. Supreme Council Royal Arcanum</i> , 192 Mass. 150, 78 N. E. 129, 7 LRANS 1154-----	39
<i>Richardson v. Jones</i> , 58 Ind. 240, 243-----	52
<i>Richardson v. Opelt</i> , 60 Neb. 180, 82 N. W. 377-----	46
<i>Royal Fraternal Union v. Lunday</i> , 51 Tex. Civ. App. 637, 113 S. W. 185-----	35, 36
<i>Ruckman v. Union Railway Co.</i> , 45 Or. 578, 78 Pac. 748, 69 LRA 480-----	42
<i>Ryan v. Rhodes</i> , 167 Ind. 121, 126, 76 N. E. 249, 78 N. E. 330 -----	52

## S

<i>Saunders v. Robinson</i> , 144 Mass. 306, 10 N. E. 815---	37
<i>Selig v. Hamilton</i> , 234 U. S. 652, 58 L. ed. 1518-----	54
<i>Sharon v. Hill</i> , 26 Fed. 337, 391-----	50
<i>Shepperd v. Bankers Union of the World</i> , 77 Neb. 85, 108 N. W. 188-----	40
<i>Shipman v. Protected Home Circle</i> , 174 N. Y. 398, 409	39
<i>Singer v. Hutchinson</i> , 183 Ill. 606, 56 N. E. 388, 75 Am. St. 133 -----	43
<i>Skelton v. Sharp</i> , 161 Ind. 384-386, 67 N. E. 535-----	52

	PAGE
<i>Slater v. Skeirving</i> , 51 Neb. 108, 70 N. W. 492, 66 Am. St. 444 -----	42
<i>Smith v. Mutual Life Ins. Co.</i> , 14 Allen 336 -----	35
<i>Smith v. Swormstedt</i> , 16 How. 288, 14 L. ed. 942 -----	41, 44
<i>Smyth v. Supreme Lodge Knights of Pythias</i> , 198 Fed. 967 -----	62
<i>Smyth v. Supreme Lodge Knights of Pythias</i> , 220 Fed. 438, 137 CCA 32 -----	62
<i>Sovereign Camp Woodmen of the World v. Hall</i> , 104 Ark. 538, 148 S. W. 526, 41 LRANS 517 -----	31
<i>Spargo v. Converse</i> , 191 Fed. 823, 112 CCA 337 -----	54
<i>Sperry, etc., Co. v. Blue</i> , 202 Fed. 82, 120 CCA 1 -----	44, 69
<i>State v. Buffalo County</i> , 6 Neb. 461 -----	42
<i>State v. Denton</i> , 229 Mo. 187, 138 Am. St. 417, 129 S. W. 709 -----	36
<i>State v. Shain</i> , 245 Mo. 78, 149 S. W. 479 -----	36
<i>Straus v. American Publishers Assn.</i> , 201 Fed. 306, 119 CCA 544 -----	44
<i>St. Louis, etc., Co. v. Kemp</i> , 104 U. S. 636, 26 L. ed. 875	
<i>Supreme Council Royal Arcanum v. Green</i> , 237 U. S. 531, LRA 1916A 771, 59 L. ed. 1089 -----	36, 37, 38, 41, 45, 65
<i>Supreme Lodge Knights of Pythias v. Knight</i> , 117 Ind. 489 -----	31, 32, 38, 39
<i>Supreme Lodge Knights of Pythias v. Kutscher</i> , 179 Ill. 340, 53 N. E. 620 -----	32
<i>Supreme Lodge Knights of Pythias v. LaMalta</i> , 95 Tenn. 157, 30 LRA 838 -----	31, 38
<i>Supreme Lodge Knights of Pythias v. Mims</i> , 167 S. W. (Tex. Civ. App.) 835 -----	62
<i>Supreme Lodge Knights of Pythias v. Mims</i> , 241 U. S. 574, 60 L. ed. 1179 -----	39, 62, 76, 83

	PAGE
<i>Supreme Lodge Knights of Pythias v. Smyth</i> , 245 U. S. 594, 62 L. ed. 492-----	39, 62
<i>Supreme Lodge Knights of Pythias v. Stein</i> , 75 Miss. 107, 21 So. 559, 37 LRA 775-----	31
<i>Supreme Tribe of Ben Hur v. Cauble</i> , 255 U. S. 356, 65 L. ed. 673-----	41, 45
<i>Suydam v. Barber</i> , 18 N. Y. 468, 471, 75 Am. Dec. 256	50

## T

<i>Talbert v. Modern Woodmen of America</i> , 83 Wash. 287, 145 Pac. 183-----	35
<i>Taylor v. Mutual Reserve Fund Life Association</i> , 97 Va. 60, 45 LRA 621, 33 S. E. 385-----	35, 36
<i>Thibert v. Supreme Lodge Knights of Honor</i> , 78 Minn. 448, 81 N. W. 220, 79 Am. St. 412, 47 LRA 136--	32
<i>Thomas v. Musical Mutual Protective Union</i> , 121 N. Y. 45, 24 N. E. 24, 8 LRA 175-----	55
<i>Tice v. Supreme Lodge Knights of Pythias</i> , 204 Mo. 349, 100 S. W. 519-----	37, 82

## U

<i>Union, etc., Bank v. Memphis</i> , 189 U. S. 71, 47 L. ed. 712-----	48
<i>Union Pacific R. Co. v. Wyler</i> , 158 U. S. 285, 39 L. ed. 983-----	44
<i>United States v. Arredondo</i> , 31 U. S. 691, 729, 8 L. ed. 547-----	33, 74
<i>United States, ex rel. v. City of New Orleans</i> , 98 U. S. 381-----	46
<i>United States, ex rel. v. County Court of Knox County</i> , 122 U. S. 306, 30 L. ed. 1152-----	46
<i>United States v. Haytien Republic</i> , 154 U. S. 118, 129, 38 L. ed. 930-----	42, 45

28 U. S. Statutes at Large, pp. 96, 97-----	PAGE 32
U. S. Comp. Statutes 1916, § 905, R. S. U. S., § 1519--	65
§ 905 R. S. U. S., § 1519, U. S. Comp. Statutes 1916--	51

W

<i>Watson v. National Life, etc., Co.</i> , 162 Fed. 7, 12, 88 CCA 380 -----	41, 45
<i>Walker v. Walker</i> , 150 Ind. 317-325, 50 N. E. 68-----	53
<i>Werlein v. City of New Orleans</i> , 177 U. S. 390, 44 L. ed. 817 -----	46
<i>Westerman v. Supreme Lodge Knights of Pythias</i> , 196 Mo. 670, 94 S. W. 470, 5 LRANS 1114-----	37, 77
<i>Wilcox v. Cassick</i> , 2 Mich. 168-----	56
<i>Wilson v. Buell</i> , 117 Ind. 315, 317, 20 N. E. 231-----	55
<i>Wineland v. Knights of Maccabees</i> , 148 Mich. 608-----	38
<i>Woolery v. Grayson</i> , 110 Ind. 149, 10 N. E. 935-----	4

IN THE

# Supreme Court of the United States

OCTOBER TERM, 1923.

---

SUPREME LODGE KNIGHTS OF PYTHIAS,	}	No. 214.
<i>Plaintiff in Error,</i>		
<i>v.</i>		
GEORGE O. MEYER,		
<i>Defendant in Error.</i>		

---

IN ERROR TO THE SUPREME COURT OF THE STATE OF  
NEBRASKA.

---

*BRIEF OF PLAINTIFF IN ERROR.*

---

## STATEMENT OF THE CASE.

This was an action by the beneficiary upon a benefit certificate issued by the plaintiff in error. As alleged in the complaint, said certificate provided, among other things, for the payment of insurance to the defendant in error upon the death of the member. Said certificate was issued subject to the charter, and the laws, rules and regulations of the society governing the Insurance Department, "now in



force, and as the same may be hereafter changed, altered, added to, amended or repealed." (Tr., p. 3, Par. 2.)

Another provision of said certificate required said member to pay the assessments, or dues, monthly, during the life of said certificate. (Tr., p. 4, Par. 1.)

And "failure to make any such payment on or before the 20th day of the month for which the same is due shall, *ipso facto*, from and after such date, forfeit this certificate" (Tr., p. 4, Par. 1.)

The application of said member for insurance, was made a part of the contract and is set out in plaintiff's complaint and one of the provisions thereof, is "I further understand and agree that if my said application for membership is accepted, constituting parts 1 and 2 thereof, that the said application, the benefit certificate or certificates that may be issued thereon, the charter, the constitution and statutes of said Supreme Lodge now in force with any and all amendments thereto hereafter enacted by the said Supreme Lodge, and all the rules and regulations of the Board of Control of said Insurance Department as the same now exists or may from time to time be adopted shall constitute the contract of insurance between the undersigned the said Supreme Lodge, and I further agree that as a member of said insurance department, if accepted I will be governed and conform to, and my obligations, and rights and those of my beneficiaries shall be governed and controlled by the said contracts." (Tr., p. 7, Par. 5.)

To this complaint the plaintiff in error filed its amended answer which among other things, alleged that the plaintiff in error was created by an Act of Congress and that it has powers to transact business, execute contracts and

change or raise the rates of insurance was derived from such Act of Congress, and that the claim of said plaintiff required the court to give a construction to said act which construction constituted a federal question upon which the courts of the United States constituted the final authority. (Tr., p. 17, Par. 1.)

Said amended answer further alleged that said member "failed, neglected and refused to pay his assessments and dues required to be paid under said certificate, No. 4651, from January, 1911, on to the time of his death, and that by reason of such failure, neglect and refusal the said certificate of membership and all the rights of said Louis J. Meyer became and were forfeited and the said plaintiff, by reason of such failure, neglect and refusal has no right of recovery for any sum whatever in this action." (Tr., p. 18, Par. 4.)

The amended answer further alleged that pursuant to said Act of Congress creating the plaintiff in error, it promulgated and made an increase of rates of insurance, and the amount required to be paid by said member and all others, was increased; that said increased rates became effective January 1, 1911; that the said member had full knowledge of said increase; that said increase was just, reasonable and necessary and that the said plaintiff in error had the authority and power to enact and pass said increase in rates and that said laws so increasing the rates were binding upon said member and that notwithstanding the duty of said member to pay said increased rates, he purposely failed, neglected and refused to pay said dues from said date to the time of his death, and that a forfeiture of all his rights

by reason thereof occurred and existed and has ever since existed." (Tr., p. 18, Par. 5.)

The amended answer further alleged that one, Holt, and others, before the bringing of this action had brought and maintained a class suit in the District Court of the United States for the District of Indiana, against the plaintiff in error in order to determine the validity of the raise in rates which said members refused to pay and that the said United States Court finally decided and decreed that the plaintiff in error had the right, power and authority so to change and increase its said rates, and that its said action in that behalf was reasonable, proper and necessary; that said defendant had a representative form of government at the time it increased said rate of insurance; that the said Holt was a member of said organization in the same class with the said Louis J. Meyer and that said District Court had full power and jurisdiction of the matters involved in said suit. And that said decree "is final, conclusive and res judicata of the questions, matters and things therein decided and is decisive of the rights of said Louis J. Meyer and the rights of the plaintiff herein to recover in this action, and holding, adjudicating, determining and finally deciding that no right of recovery, under the facts of this case existed, and by reason of said decision and the determination of said questions by said court, the said plaintiff is now barred and estopped from again litigating said questions or denying the conclusiveness of said decision in said case." (Tr., p. 19, Par. 6.)

The amended answer further alleges that the Supreme Court of the United States in an appeal taken by the plaintiff in error in a case of Mims against the plaintiff in error

affirmed by the Court of Civil Appeals of the state of Texas, had construed the statute creating the plaintiff in error herein and had decided in said case that the plaintiff in error had the right and the power to increase its rates under and by virtue of the same Supreme Statute which is involved in the present case, and that said decision so construing said statute is binding and obligatory upon the courts of the several states by reason of the fact that the act creating the plaintiff in error is a federal statute. (Tr., p. 20, Par. 7.)

The amended answer further alleges that said Louis J. Meyer in his application and in his certificate also agreed to abide by all the rules and regulations then enacted and all to be subsequently enacted governing said insurance, and that the subsequent statute raising the rates was proper and just to all members and that his beneficiary is now estopped from denying or controverting the right of the plaintiff in error to raise the rates of insurance in controversy herein. (Tr., p. 21, Par. 8.)

The amended answer further alleged that the plaintiff in error was first organized under the laws of the District of Columbia in 1870, for a period of twenty years; that its charter expired in 1890; that from 1890 to 1894 it continued transacting its customary business as a *de facto* corporation; that in 1894 a federal statute was enacted creating the plaintiff in error and that it has since continued to transact all of its business under and by virtue of said Act of Congress.

It further alleges that the Insurance Department was created in 1877 that it continued to write insurance from that time on; that the plaintiff's decedent was a member of

the Insurance Department and that Joseph Holt and all others who were named as plaintiffs in the case of Holt *et al*, against Supreme Lodge as above set forth were members of said class in said Insurance Department; that in 1910 the plaintiff in error "ascertained that the rates theretofore fixed were inadequate and would not produce funds sufficient to mature the certificates outstanding; that there was an increasing deficit due from each holder of a certificate because the dues were less than cost of insurance; that said Supreme Lodge was through necessity required to take action for the relief of said Department, that said Supreme Lodge did enact and promulgate a statute fixing a schedule of rates being the same rates now in force; that the enactment of said statute and the promulgation of said rates caused more or less dissatisfaction among the members of said Department of defendant and that, because thereof, Joseph Holt, Victor Mauberret, Ross Carlin and 17 others, all citizens and residents of the state of Louisiana "on behalf of themselves and all others similarly situated," on January 25, 1911, filed their bill in equity in the United States District Court for the District of Indiana, alleging that said statute was invalid, wrongful and not binding upon them or anyone holding a certificate similar to theirs, and prayed that the said court grant a writ of injunction restraining the defendant from putting into effect said statute increasing said rates and requiring the defendant to accept the old and prior rates; that the defendant duly answered said bill, denying said statutes was invalid but asserted that it was valid and necessary to the further conduct of said defendant." (Tr., p. 21, Par. 9.)

That said cause was submitted for trial and the court found that the defendant therein was a fraternal beneficiary society conducted without profit, possessing a lodge system and ritualistic form of work and had a representative form of government; that the increase of rates was duly and legally made. That the said Joseph Holt and all others were in the same class with the plaintiff's decedent and held certificates similar in all respects to the one held by plaintiff's decedent and sued upon in this case. (Tr., p. 22, Par. 9.)

It was further alleged that an appeal was taken from the decree and judgment of the United States District Court to the Circuit Court of Appeals for the Seventh Circuit and that said judgment was duly affirmed and that the plaintiffs therein duly filed their appeal from the judgment of affirmation of the Circuit Court of Appeals, and that said appeal was dismissed by the Supreme Court of the United States and that said judgment and decree of the District Court of the United States has been in full force and effect since its rendition.

The amended answer further alleges that the said judgment and decree of the district court of the United States and of the Circuit Court of Appeals in said cause are entitled to full faith and credit in the courts of the State of Nebraska and that said judgment and decree ought to estop the plaintiff from alleging or asserting that the statute of 1910 raising the rates is invalid or unenforceable against the plaintiff, and that said plaintiff is estopped by reason thereof from alleging or asserting that the defendant does not have and maintain a representative form of government

and that the said judgments should be and are binding and conclusive on all courts, state as well as federal and that a failure so to consider and determine constitutes a failure to give full faith and credit to the records and judgments of said court, as required by Section 905 Revised Statutes of the United States, and also is in violation of Article 4, Section 1, of the Federal constitution requiring full faith and credit to be given to the public records and judicial proceedings of every other state.

The amended answer further alleged that in 1892, 1901, 1909 and 1910, extra assessments were made against the plaintiff's decedent and in 1894 and 1901 increases in rates were established and promulgated by the defendant and said increases were duly paid by plaintiff's decedent; that the manner of selecting the Supreme Lodge of the defendant has been prior to and was subsequently to said times the same as in the year 1910 when the increase in question was enacted; that by reason of said facts the plaintiff ought to be estopped from asserting that the defendant in 1910 did not have a representative form of government.

The plaintiff replied to said amended answer by alleging that no act of Congress was involved in this action; that the certificate of insurance was not conditional and was not subject to a change by said defendant and further denied that the said Louis Meyer failed or refused to pay his assessments after January 1, 1911, or at any other time, and that the defendant was not vested with power or authority to make any increase in the rates of insurance which would affect the certificate sued upon and further denied that any change of the rate of insurance was made affecting the certificate of plaintiff's decedent. (Tr., p. 25.)



Said reply further alleged that on a prior appeal of this cause the Supreme Court of Nebraska had held that the plaintiff in error did not have a representative form of government, and that it was without any power to change its rates by reason of said fact, and that the pretended rates sought to be made effective January 1, 1911, were void, and therefore, said certificate did not become forfeited but remained in force and effect.

### JUDGMENT.

The finding was for the plaintiff. (Tr., pp. 26-27.) A motion for a new trial was duly filed. (Tr., pp. 28-29.) Said motion alleged that the finding of the court was not sustained by sufficient evidence and that it was contrary to law.

Also that the court erred in refusing to give credit to the judgment and proceedings in the Holt case. That the Court erred in holding that said decisions of federal courts were not final and conclusive as to the validity of the statutes raising the rates; that the court erred in holding that its failure to give full faith and credit to the judgment in the Holt Case was in violation of Article 4, Section 1, of the Federal Constitution; that the court erred in failing to give effect to said judgment and in holding that the failure to give effect to said judgment did not constitute a violation of Section 905 Revised Statutes of the United States; that the Court erred in refusing to sustain the increase of rates and in so doing denied the authority of the defendant under the Act of Congress creating the defendant, and that the Court erred in holding that the judgment and decree of

the Federal Court was not binding upon the courts of the State of Nebraska. (Tr., pp. 28-29.)

Said motion was overruled and an exception reserved.

### EVIDENCE.

The evidence consisted mostly of stipulations. Two witnesses testified: Mr. W. O. Powers, General Secretary, and George A. Bangs, a member of the Board of Control.

It was stipulated by the parties that the Supreme Lodge Knights of Pythias is a fraternal order maintaining an Insurance department, having the principal place of business at Indianapolis, Indiana, and authorized to transact business in Nebraska during the period covered by the pleadings in the case; that on June 11, 1885, Louis J. Meyer was a member of the subordinate lodge of the defendant and was the holder of a certificate of insurance as heretofore described in plaintiff's complaint, on June 27, 1910, he petitioned for and secured a change of beneficiary in said certificate. Said certificate is set out in transcript on pp. 37-43 and contains the provisions heretofore set out in the abstract of plaintiff's complaint.

It was further stipulated that said insurance was duly paid up to January 1, 1911. (Tr., p. 33, ll. 4-10.)

It was further stipulated that the said decedent from and after January 1, 1911, up to the time of his death tendered to the defendant, Section Secretary all dues, assessments and charges at the same rate he was paying during 1910, and that said tenders were refused by the defendant. (Tr., p. 33, Par. 1.)

The reason for the refusal to accept the said tendered dues and assessments was that the amounts so tendered were insufficient under the increased rates which became effective January 1, 1911, and the defendant forfeited said insurance on the books of the society, and said forfeiture remained so until said member's death. (Tr., p. 34.)

It was further stipulated that Louis J. Meyer died April 11, 1916, and that notice of his said death was duly given to the defendant but liability was denied. (Tr., p. 34.)

It was further stipulated that in 1885 the Supreme Lodge Knights of Pythias was a corporation organized and doing business under the laws of the United States for the District of Columbia; that it was organized August 5, 1870, and continued as such until 1890; that it continued its business as a de facto corporation until 1894; that on June 29, 1894, the Supreme Lodge Knights of Pythias was created by a special statute of the United States under which it has existed and operated ever since.

Said act appears in 28 U. S. Statutes at Large, 96-97, which act is as follows:

"An Act to Incorporate the Supreme Lodge of the Knights of Pythias. Be it enacted by the Senate and House of Representatives of the United States of America, in Congress Assembled:

That George B. Shaw, of the City of Eau Claire, State of Wisconsin; William W. Blackwell, of the City of Henderson, State of Kentucky; Walter B. Richie, of the City of Lima, State of Ohio; Robert L. S. White, of the City of Nashville, State of Tennessee; Philip T. Colgrove, of the City of Hastings, State of Michigan, and Tracy P. Bangs, of the City of Grand Forks, State of North Dakota, officers and

members of the Supreme Lodge Knights of Pythias, and their successors, be and they are hereby incorporated and made a body politic and corporate in the District of Columbia, by the name of 'The Supreme Lodge Knights of Pythias,' and by that name it may sue and be sued, plead and be impleaded, in any court of law or equity, and may have and use a common seal, and change the same at pleasure, and be entitled to use and exercise all the powers, rights and privileges incidental to fraternal and benevolent corporations within the District of Columbia.

Section 2. That the said corporation shall have the power to take and hold real and personal estate, not exceeding in value one hundred thousand dollars, which shall not be divided among the members of the corporation, but shall descend to their successors for the promotion of the fraternal and benevolent purposes of said corporation.

Section 3. That all claims, accounts, debts, things in action or other matters of business of whatever nature now existing for or against the present Supreme Lodge Knights of Pythias mentioned in section 1 of this act, shall survive and succeed to and against the body corporate and politic hereby created; provided that nothing contained herein shall be construed to extend the operation of any law which provides for the extinguishing of claims or contract by limitations of time.

Section 4. That said corporation shall have a constitution and shall have power to amend the same at pleasure; provided that such constitution or amendments thereof do not conflict with the laws of the United States or of any State.

Section 5. That said corporation shall not engage in any business for gain; the purposes of said corporation being fraternal and benevolent.

Section 6. That Congress may at any time amend, alter or repeal this act.

Approved June 29, 1894."

(28 U. S. Statutes at Large, 96 and 97.)

It was further stipulated that the Supreme Statutes of 1906, 1908, 1910, 1912, 1914 and 1916 be admitted in evidence with the agreement that either party could select such portions thereof as were deemed important in the hearing of the case. (Tr., p. 34.)

It was further stipulated that the Supreme Lodge of 1910 was composed of 163 members; that nine thereof were Past Supreme Chancellors and eight, Supreme officers of the defendant, that ninety-eight were holders of certificates in the Insurance Department and of said total 146 were delegates elected by the various grand lodges; that all of said members participated in the enactment of the statutes increasing the rates which became effective January 1, 1911; that the Supreme Lodge during the period covered by the pleadings in this case was constituted in accordance with the Supreme constitution as it existed in 1910 and that all legislation and statutes were enacted in substantially the same manner; that except the laws and statutes enacted in 1910 there is no question or issue as to the validity of laws contained in the Supreme Constitution. (Tr., p. 35, Par. 1.)

It was further stipulated that the legislation of 1910, increasing the rates, constituted a grievance to many members of the Insurance Department; that Joseph Holt and nineteen others, members of the Insurance Department and holders of certificates in class 4 thereof, similar to the certificate held by plaintiff's decedent,

"on behalf of themselves and all other persons similarly situated"

filed suit in the District Court of the United States for the District of Indiana against this defendant, for the purpose

of declaring invalid said statutes increasing the rates; that after a trial judgment was rendered in favor of the defendant; that an appeal was taken from said judgment to the Circuit Court of Appeals for the Seventh Circuit, which court affirmed the judgment of the District Court; 235 Fed. 885 (Tr., p. 35, Par. 2).

That the complainants appealed from said judgment of the Circuit Court of Appeals to the Supreme Court of the United States and that the complainants dismissed said appeal October 21, 1918. (248 U. S. 588.)

### THE HOLT CASE.

The judgment in the Holt case pleaded as *res judicata* in this case as to the validity of the Supreme Statutes of the order increasing the rates, was a suit filed in the District Court of the United States for the District of Indiana. The substantial allegations of the complaint (Tr., pp. 53-72) so far as is deemed material here to the defense, alleged that the Supreme Lodge Knights of Pythias is a fraternal association maintaining an Insurance Department; that it is composed of various grand and subordinate lodges and that the complainants are members of the subordinate lodges of the defendant; that the members of the Insurance Department were divided into classes and the complainants were members of Class 4 thereof. That they bring their bill of complaint "on behalf of themselves and all other persons similarly situated; that they are in good standing in their local lodge and have paid their dues and assessments in accordance with the laws of the order. That the assessments were payable monthly in advance. That they

duly tendered the dues and assessments for the month of January, 1911, and that said tenders were refused in accordance with said statutes increasing the rates and that the defendant refused to accept the amounts so tendered being the old rates." (Tr., pp. 53-58.)

They further allege that said increased rates were in violation of their certificates and impaired the obligation of their contracts with the defendant and destructive of their rights and of the obligations of the defendant.

It was further alleged that said increase of rates would deprive the complainants of all their rights in and to participation of the trust fund already paid in and held by said defendant.

It was further alleged that members of said Fourth Class were about to institute suits in various parts of the United States against the defendant on account of the alleged unlawful increase of rates, which would entail large expense against the trust funds for the defense of said suits. And that the defendant would be seriously interfered with by reason of the multiplicity of actions about to be brought and that it would be to the advantage of the defendant and all members of the Fourth class for this court to assume jurisdiction of said controversy.

To this bill of complaint the defendant filed its amended answer. (Tr., pp. 96-120.)

Said amended answer alleged that the defendant is a fraternal beneficiary society created by act of Congress that it has established throughout the United States Grand Lodges in the several states and territories and also subordinate lodges responsible to said grand lodges, all of which are controlled and governed by the Supreme Lodge.



That the rates existing prior to January 1, 1911, were grossly inadequate for the protection of the certificate holders and that the receipts were less than the amount necessary to meet the current losses, and wholly insufficient to meet the necessities of the Insurance Department.

That in 1901, the Supreme Lodge enacted a statute raising the rates to be paid by the members of the Fourth Class; that said rates so established in 1901 were inadequate and insufficient and that subsequent to 1907 the mortuary fund was constantly and rapidly diminished and that the rates in force failed to produce a sufficient sum to meet the necessities of said Insurance Department. That all certificates issued by said Department contained the provision that "In consideration of the payment hereafter to said endowment rank (now Insurance Department) of all assessments as required and the full compliance with all laws governing this rank now in force, or that hereafter may be enacted," said Supreme Lodge will pay to the beneficiary the face of the certificate. (Tr., p. 100.)

Said amended answer further alleged that each of said complainants failed and refused to pay the increased rates established by the Supreme Lodge at its session in 1910 and that by reason thereof each of said members became forfeited and ceased to have any interest or claim as members of said Insurance Department. (Tr., p. 103.)

Said amended answer further alleged that said statute increasing the rates did not violate any law of the defendant nor any contract existing between it and the complainant or any duty to the complainants or any of them but avers that it adopted the only course possible for the pro-

tection of their rights, and that without such increase the mortuary fund would have become wholly insolvent and permanently wrecked. (Tr., pp. 105-106.)

The defendant herein in its cross bill in said Holt case alleged that theretofore in the District Court of the United States for the District of Indiana, Fritz Heimsoth and others on behalf of themselves and all others similarly situated had brought a suit in which was drawn in question the validity of the Supreme statute increasing the rates which suit had been prosecuted to final judgment, which judgment was in favor of the validity of said Supreme Statute. (Tr., pp. 125-204.)

The record of said Holt case further shows a reference to the Master in Chancery and the filing of the Master's report. (Tr., pp. 207-208.)

Finding No. 3 of said report is in part as follows:

"That said original corporation was during its entire existence and said defendant is and has been since its incorporation a fraternal beneficiary society, that neither the defendant nor its said predecessor was organized or was ever conducted for profit; that each of said corporations during the entire period of their existence possessed a lodge system and a ritualistic form of work and had a representative form of government." (Tr., p. 210, Finding 3.)

Finding 27 of said Master's report is as follows:

"That the legislation of the defendant with reference to the creation of the Fifth Class, the transfer of members from the Fourth to the Fifth class, *the rerating of the Fourth Class, which became effective January 1, 1911*, and the use of the expense fund of the Insurance Department for the joint ex-

penses of the Fourth and Fifth Classes was all duly and legally adopted by the said defendant in pursuance to the constitution and laws of said defendant and in accordance with the mode therein prescribed for the adoption of amendments and the enactment of new legislation." (Tr., p. 243, Finding 27.)

Said record further shows the conclusion of law by said Mastery in Chancery, as follows:

"The equities of this suit are not with the complainants and the bill of complaint should be dismissed at the complainant's costs.

Accordingly a decree dismissing the bill of complaint at complainant's costs is recommended.

Respectfully submitted,

EDWARD DANIELS,  
Master in Chancery."

May 24, 1913.

(P. 244, Par. 1.)

Said record further shows the complainant's exceptions to said Master's report (Tr., pp. 244-245).

Said Fourth exception to said Master's report is as follows:

"to the 27th finding of fact, in this, that the Master erroneously found therein that the legislation of the defendant with reference to the creation of the fifth class, the transfer of members from the fourth to the fifth class, *the rerating of the fourth class, which became effective January 1, 1911*, and the use of the expense fund of the Insurance Department for the joint expense of the Fourth and Fifth Classes was all duly and legally adopted by the defendant in pursuance to the constitution and laws of the defendant, and in accordance with the mode therein prescribed for the adoption of amendments and the

enactment of new legislation; whereas the evidence in said cause and the findings of fact contained in said Master's report show that said legislation was adopted in contravention of defendant's constitution of 1884 and 1886, and in violation of its representation, express declarations of trust and contracts with its fourth class members."

(Tr., p. 246, Par. 1.)

Said record further shows a stipulation entered into between the parties in the said Holt case, the fourteenth of which is in part as follows:

"That the suit instituted by these complainants against the defendant Supreme Lodge Knights of Pythias involved additional questions of law and fact different from those involved in the action instituted by the said Fritz Heimsoth, in that in this cause of action the complainants contest the right of the defendant to rerate the members of said Fourth Class of the Insurance Department according to a system adopted by said Supreme Lodge Knights of Pythias which issues of law and fact relating to the right of the defendant to rerate the members of the Fourth Class were in no wise involved in the action instituted by Fritz Heimsoth against said Supreme Lodge."

(Tr., p. 249, Stipulation 14.)

Said record further shows judgment in said Holt case as follows:

"Come now the parties by their respective solicitors and thereupon the defendant having heard the argument of counsel upon the exceptions to the Master's report herein, and duly considered the same and being sufficiently advised in the premises over-

rules said exceptions and approves and confirms said report.

It is thereupon ordered, adjudged and decreed by the court that the bill of complaint herein be and the same is hereby dismissed for want of equity, and it is further ordered, adjudged and decreed that the complainants do pay to said defendant its costs herein expended, taxed at \$———."

(Tr., p. 250, Par. 3.)

Said record further shows an appeal from said decision, and also the decision of the Circuit Court of Appeals for the Seventh Circuit affirming said judgment of the District Court. (Tr., p. 251-254.)

The following sections of the Supreme Constitution among others were introduced in evidence:

**"PREAMBLE.**

The Supreme Lodge Knights of Pythias, a corporation existing by virtue of the act of Congress approved June 29, 1894, is the source of all authority in the order of Knights of Pythias and does hereby ordain and establish this Supreme Constitution."

**"RESERVE POWERS.**

The Supreme Lodge Knights of Pythias hereby reserves to itself all powers which are not herein delegated."

**"ARTICLE TWO.**

The Supreme constitution and the laws and rituals enacted by the Supreme Lodge in accordance therewith shall be the supreme law of the order of Knights of Pythias.

Section 482. To the end that every certificate in the Fourth Class of the Insurance Department shall on maturity be paid in full according to the tenor

thereof the Supreme Lodge enacts and declares that: \* \* \*

(b) Every member of the Fourth Class of the Insurance Department at the time when this statute takes effect and who continues his membership until Dec. 31, 1910, shall pay a monthly payment for each month thereafter beginning with the month of January A. D. 1911, monthly payments in accordance with his attained age and occupation and the amount of a benefit provided for in his certificate, on January 1, A. D. 1911, as fixed by the table herein, unless and until otherwise provided by enactments of the Supreme Lodge." \* \* \* (Tr., p. 284, Section 482.)

"Sec. 495. The right to change, increase, or adjust the schedule of rates in the Fourth and Fifth Classes, respectively, or any of them, is expressly reserved to the Supreme Lodge, as is also the right to apply any such changes increased or adjusted schedule of rates to all the members' certificates. This right of readjustment includes the right to advance members without reference to the plan or class of which they are members to their attained age at any time, and apply new rates applicable thereto when deemed necessary by the Supreme Lodge to carry out the purposes of the Insurance Department. (Tr., p. 290, Section 495.)

"Section 519. The regular monthly payments and assessments of all members of the Insurance Department shall be due and payable to their respective Section Secretaries without notice in advance, on the first day of each and every month, and the failure to make such payment on or before the exact day of each month shall cause from and after such date a forfeiture of the certificate of membership and all right, title and interest such member or his beneficiaries may have in and to the same and membership shall thereby cease ipso facto \* \* \*. In case of forfeiture under the above section, membership may be regained only in the manner provided by law. (Tr., p. 291, Section 519.)

## TESTIMONY.

The defendant, to sustain the issues on its part, introduced the witness, WALTER O. POWERS, who testified as follows:

Have been General Secretary of the Supreme Lodge Knights of Pythias, Insurance Department, since November, 1910. Had charge of the books and the General office of the Insurance Department. Was acquainted with the financial condition of the Department prior to 1910. The Fourth Class on October 31, 1910 had 11,392 members and the mortuary fund contained \$675,800.85. The Fourth Class members were received between 1884 and 1910. The Fourth Class decreased from 1906 to 1910, the rates in force from September 1901 to January 1911 were 85% of the National Fraternal Congress Table. This was not sufficient to *mature* the certificates. The amount due from Mr. Meyer after January 1, 1911 was \$26.30 per month. (Tr., p. 296.) Computing the payments made by Mr. Meyer from the time he became a member, with interest at 3½%, charging him with actual cost of insurance accumulated at the same rate, the mortuary contribution in comparison with actual cost of insurance furnished without considering any reserve or other factor and there was a deficit due from him on such basis of \$1403.86. (Tr. p. 296-297.) This represents a deficit or protection secured by him at that much less than the actual cost. (Tr., p. 297.) There was a special assessment called July 15, 1892. The rates were increased 5c per month for each \$1,000 of insurance March 1, 1894. A special assessment, in addition to the twelve was created in 1901. (Tr., p. 297.) The increase in 1894 was



made because the mortuary contributions were not sufficient to meet the maturing claims. (Tr., p. 298.) In the rerating of 1901 the payments were based upon the age of entry into the Insurance Department, and not upon the attained age, but in 1910 the rerating was based upon the American Experience Table of Mortality with an interest assumption of  $3\frac{1}{2}\%$  and at the attained age. (Tr., p. 298-299.) Under the statute of 1911, there is an annual valuation and accounting at the end of each year and if condition justify, the payment of one or more monthly dues will be waived. (Tr., p. 299.) The membership of the fourth class is about 1,000. The insurance about \$1,800,000. The mortuary fund about \$625,000. This will mature all certificates in that class. The rerating was done by Mr. S. H. Wolf, our consulting actuary of New York. (Tr., p. 300.) No new members were admitted to the Fourth Class after 1910. Mr. Meyer after September 1, 1901, paid \$5.70 per month. From 1885 to 1894, \$3.30 a month; from 1894 to 1901, \$3.40 per month. These were the total payments. His certificate was \$2,000. The deficit on Mr. Meyers' certificate was \$1,403.86. (Tr., p. 301.) In 1910 an investigation showed a mortuary fund of about \$1,189,000 where it should have been about \$30,000,000. This led to the increase of rates in 1910. Provision was made for admitting members of the Fourth Class into the Fifth Class at their attained age but without medical examination. (Tr., p. 303.) There were about 55,000 members of the Fourth Class transferred to the Fifth Class. There was a great increase in lapsation of the Fourth Class members between 1906 and 1910. (Tr., p. 304.)

Mr. GEORGE A. BANGS testified as follows:

I am a member of the Board of Control and have been for the past 11 years. Also served from 1902 until 1904. From 1904 to 1906, was chairman of Special Committee created by Supreme Lodge at the 1904 Conference for purpose of investigating conditions of the Insurance Department. (Tr., p. 305.) I worked with the actuaries in making the investigation, assisted them in ascertaining the facts, met with the committee every three months and with the Board of Control during the two-year period. The Fourth Class at that time showed actual deficit of about thirty million dollars. That was the amount required to be on hand in cash and invested at  $3\frac{1}{2}\%$  in order to mature the certificates outstanding. There were several hundred thousand dollars death claims which had accumulated. (Tr., 306.) We were confronted with problem of rerating Fourth Class so that it would pay its obligations. There were but fifteen or twenty members in classes outside of the Fourth. We created the Fifth Class and began educating members of the Fourth Class to the desirability of permanent safe insurance. Probably three-fourths of the members voluntarily transferred to the new class. This began in 1907-1910. We were confronted with the necessity of rerating the Fourth Class to prevent insolvency. Adopted the American Experience Table of Mortality, the same as in the Fifth Class. (Tr., 307.) A slight difference was made in favor of older members in the expense loading. Since 1910 claims have been paid promptly as they matured. Have an annual accounting. If the earnings for the year are sufficient we waive one or more payments. (Tr., 308.) Our accounting in 1904 showed death losses about the same

as American Experience Table of Mortality and exceeded the National Fraternal Congress by a material percentage which was the basis of the 1901 rates. All of the mortuary funds on hand in 1906 were given to Class Four. (Tr., 309.) After the creation of Class Five there were many withdrawals from the Fourth Class. There was no increase in rates in the Fourth Class from 1906 up to 1910. It became necessary to levy special assessments in 1909-1910. Enacted the rerating statute for Class Four in 1910, becoming effective January 1, 1911. (Tr., 310.) The rates fixed for Class Four were not in any manner affected by the transfer of members to class Five. The rates were fixed upon the attained age of each member and have nothing to do with other people. There was no mortuary fund in comparison with the risk. In 1906 there was a thirty million dollar deficit. There was a list of outstanding obligations for \$125,000,000 and assets of promises. The difference between them showed about \$30,000,000. Rates are based upon expectancy of death. (Tr., 311.) The rates were fixed in order to meet outstanding policies and liabilities. Rates are fixed upon a mortality table. This table assumes from experience that at age 65 a certain number of men will die; at 66, a larger number will die; at 67 a still larger number will die. The rates were fixed so that it would mature all certificates except those withdrawn. There was no way to tell how many would withdraw. (Tr., 312.)

W. O. POWERS being recalled, testified:

The mortuary fund of the Fourth Class always remained to the credit of the members of that class. It was never changed to the Fifth Class. (Tr., 313.) There was never

any change made in rates for the Fifth Class after its creation. Members of the Fourth Class in transferring to the Fifth Class were not required to pass medical examination. They were given the option of eight or ten different forms of certificate. (Tr., 314.) The lapsation of a policy would not constitute a benefit to the society. The reason is that those who lapse are usually profitable and desirable risks—men in good health. The payments made by Mr. Meyer had already been used in payment of death losses. There was no reserve in the Fourth Class. (Tr., 315.) If all Fourth Class certificates had lapsed it would have ended that class, and the society would have the money. There has been practically no lapsation in Class Four since 1911.

### ASSIGNMENTS OF ERRORS.

To the decision of the Supreme Court of the State of Nebraska the plaintiff in error has assigned errors as follows:

"The Supreme Lodge Knights of Pythias in connection with its petition for a writ of error herein makes the following assignment of errors which said Supreme Lodge Knights of Pythias avers occurred in the final order and judgment herein, dated the 5th day of October, 1922, and in overruling petition for a rehearing November 20, 1922.

First. The Supreme Court of the State of Nebraska erred in holding that the action of Supreme Lodge Knights of Pythias, as created by the act of the United States Congress, on June 29, 1894, 28 U. S. Statutes at Large, pp. 96, 97, in increasing the rates on its members in the insurance department, in 1910, effective January 1, 1911, was and is invalid and void, and not binding on the members thereof who were and are citizens of the State of Nebraska.

Second. The Supreme Court of the State of Nebraska erred in holding that no legislation of said Supreme Lodge Knights of Pythias, affecting those of its members holding insurance certificates, is valid and effective unless the membership of said Supreme Lodge shall be composed entirely of members holding insurance certificates, and shall also be biennially elective by the members holding such insurance certificates, whereas, the federal statute creating said corporation (28 U. S. Statutes at Large, pp. 96, 97) makes no such restriction, and specially creates the 'officers and members of the Supreme Lodge Knights of Pythias, and their successors,' as a body corporate, giving certain enumerated powers thereto, one of which is to issue insurance certificates to those of its membership desiring same.

Third. The Supreme Court of the State of Nebraska erred in holding that the power to strike down the statutes enacted by said Supreme Lodge Knights of Pythias, inhered in the States, after the validity of said questioned statutes had been finally decided and held valid in two decisions of the Honorable, the Supreme Court of the United States.

Fourth. The Supreme Court of the State of Nebraska erred in refusing to give effect to the judgment and decree of the Honorable, the United States District Court for the District of Indiana, in the case of *Joseph Holt, et al. v. Supreme Lodge Knights of Pythias*, wherein several members of said order, who held insurance certificates therein, and who were similarly situate with the plaintiff herein in all respects and who brought said suit in their own behalf and in behalf of all others similarly situated, for the express object and purpose of having said statutes increasing the rates, which are the same statutes involved in this action set aside and held invalid and void, and to enjoin said Supreme Lodge Knights of Pythias from enforcing same, and which judgment and decree was appealed from, and affirmed by the Honorable Circuit Court of Appeals for the Seventh Circuit and by said Circuit Court of

Appeals for the Seventh Circuit affirmed, which judgments and decrees are now in full force and effect.

Fifth. The Supreme Court of the State of Nebraska erred in holding that the plaintiff in this action was not bound by the judgment and decree of the District Court of the United States for the District of Indiana in the case of *Joseph Holt, et al. v. Supreme Lodge Knights of Pythias*, which suit was brought and maintained by said Joseph Holt and others, on behalf of themselves and of all others similarly situate, and wherein the validity of the supreme statutes of said Supreme Lodge Knights of Pythias, was affirmed and set at rest, the plaintiff herein, being similarly situate with the plaintiffs in said Holt case, \* \* \* and the same being a right guaranteed to the plaintiff in error under and by virtue of Article 4, Section 1, of the Federal Constitution, guaranteeing full faith and credit by one state to the judicial proceedings of every other state.

Sixth. The Supreme Court of the State of Nebraska erred in holding that the plaintiff in this action was not bound by the judgment and decree of the District Court of the United States for the District of Indiana in the case of *Joseph Holt et al. v. Supreme Lodge Knights of Pythias*, which suit was brought and maintained by said Joseph Holt and others, on behalf of themselves and of all others similarly situate, and wherein the validity of the supreme statutes of said Supreme Lodge Knights of Pythias, was affirmed and set at rest, the plaintiff herein, being similarly situate with the plaintiffs in said Holt case, and the same being a right guaranteed to the plaintiff in error by virtue of Section 905 R. S. U. S., Section 1519, U. S. Comp. Stat. 1916, providing that the records and judicial proceedings of any state or territory, or of any such country, shall have such faith and credit given to them in every court within the United States as they may have by

law or usage in the courts of the State from which they are taken.

Seventh. The Supreme Court of the State of Nebraska erred in holding that the plaintiff, being the defendant in error herein, is not estopped by virtue of his membership in said Supreme Lodge Knights of Pythias so created by federal statute, 28 U. S. Statutes at Large, pp. 96, 97, from again raising the question of the validity of the rates enacted by said Supreme Lodge Knights of Pythias in 1910, for the reason that Joseph Holt and others in their own behalf, and in behalf of all others similarly situate, including the defendant in errors assured, brought and maintained a suit for the purpose of declaring void the same statutes involved in this action, and wherein a judgment and a decree of the United States District Court for the District of Indiana was rendered that said statutes were valid and obligatory.

Eighth. The Supreme Court of the State of Nebraska erred in holding that the Supreme Lodge Knights of Pythias did not have and maintain, at the time of the enactment of the statutes in question, increasing the rates, a representative form of government, whereas it had and maintained at said time and ever, the same form of government which it had at its creation by federal statute, 28 U. S. Statute at Large, pp. 96, 97.

Ninth. The Supreme Court of the State of Nebraska erred in holding that the Supreme Lodge Knights of Pythias did not have and maintain at the time of the enactment of the statutes in question, increasing the rates, a representative form of government, whereas it was alleged in the answer and shown by the evidence that said question was expressly decided adversely by the judgment and decree of the United States District Court for the District of Indiana, in the case of Joseph Holt and others against Supreme Lodge Knights of Pythias, wherein Joseph Holt and others sued in their own behalf and in behalf of all others similarly situate,

including defendant in error's assured, to set aside said statutes increasing the rates, as invalid and void.

The Supreme Court of the State of Nebraska which is the highest court in said State in which a decision in this action could be had where was drawn in question the rights of the plaintiff in error under the federal act of 1894, 28 U. S. Statutes at Large, pp. 96, 97, creating the plaintiff in error, and the rights of plaintiff in error under Section 905 R. S. U. S., and under Article 4, section 1, of the federal constitution, and the question of estoppel of the defendant in error under the federal statute of 1894, 28 U. S. Statutes at Large, pp. 96, 97, and the question of the validity of the legislation of said plaintiff in error under the federal statute creating it, as affecting the members in the State of Nebraska.

The Supreme Lodge Knights of Pythias prays that a writ of error from the Supreme Court of the United States may issue to the Supreme Court of the State of Nebraska; and further prays that the Supreme Court of the United States will reverse the said final order and judgment of the Supreme Court of the State of Nebraska, and that the Supreme Lodge Knights of Pythias may be restored to all things and rights which it has lost by reason of the said final order and judgment; and that it may have such other and further relief as may be proper and just."



## POINTS AND AUTHORITIES.

## FIRST ASSIGNMENT OF ERRORS.

The first error complained of is as follows: (Tr., p. 332.)

"The Supreme Court of the State of Nebraska erred in holding that the action of the Supreme Lodge Knights of Pythias, as created by the act of the United States Congress on June 29, 1894, (28 U. S. Statutes At Large, pp. 96, 97) in increasing the rates on its members in the Insurance Department, in 1910, effective January 1, 1911, was and is invalid and void, and not binding upon the members thereof who were and are citizens of the state of Nebraska."

*Point One.*

1. The By-Laws of a Mutual Association are said to be a law unto the members.

*Grosvenor v. United Society of Believers*, 118 Mass. 78, 90;

*Sovereign Camp Woodmen of the World v. Hall*, 104 Ark. 538, 148 S. W. 526, 41 LRANS 517;

*Supreme Lodge Knights of Pythias v. Knight*, 117 Ind. 489;

*Bauer v. Sampson Lodge Knights of Pythias*, 102 Ind. 262;

*Supreme Lodge Knights of Pythias v. Stein*, 75 Miss. 107, 21 So. 559, 37 LRA 775;

*Supreme Lodge Knights of Pythias v. LaMalta*, 95 Tenn. 157, 30 LRA 838;

*Daughtry v. Supreme Lodge Knights of Pythias*, 48 La. Ann. 1203;

*Supreme Lodge Knights of Pythias v. Kutscher*,  
179 Ill. 340, 53 N. E. 620;

*Thibert v. Supreme Lodge Knights of Honor*, 78  
Minn. 448, 81 N. W. 220, 79 Am. St. 412, 47  
LRA 136;

*Kocher v. Supreme Council Catholic Benevolent  
Legion*, 65 N. J. L. 649, 48 Atl. 544, 86 Am. St.  
687, 52 LRA 861;

*Benes v. Supreme Lodge Knights and Ladies of  
Honor*, 231 Ill. 134, 83 N. E. 127;

*Pfister v. Gerwig*, 122 Ind. 567.

#### *Point Two.*

"The Federal Statute creating the Supreme Lodge Knights of Pythias provided that certain persons [naming them], officers and members of the Supreme Lodge Knights of Pythias, and their successors, be and they are hereby incorporated and made a body politic and corporate \* \* \* entitled to use and exercise all the powers, rights and privileges incident to fraternal and benevolent corporations within the District of Columbia. \* \* \* That said corporation shall have a constitution and shall have power to amend the same at pleasure."

Under this statute the successors of said named officers and others constituting the Supreme Lodge, elected and holding office in accordance with the constitution of said order, had the right to enact all legislation governing said order.

28 U. S. Statutes at Large, pp. 96, 97;

*Supreme Lodge Knights of Pythias v. Knight*, 117

Ind. 489, 20 N. E. 479, 3 LRA 409;

*Dornes v. Supreme Lodge Knights of Pythias*, 75

Miss. 466, 23 So. 191.

*Point Three.*

"It is a universal principle, that, where power or jurisdiction is delegated to any public officer or tribunal over a subject-matter, and its exercise is confided to his or their discretion, the acts so done are binding and valid as to the subject matter; and individual rights will not be disturbed collaterally, for anything done in the exercise of that discretion, within the authority and power conferred. The only questions which can arise between an individual claiming a right under the acts done, and the public, or any person denying its validity, are, power in the officer, and fraud in the party. All other questions are settled by the decision made or the act done by the tribunal or officer; whether executive (1 Cranch 170-1), legislative (4 Wheat. 423; 2 Pet. 412; 4 Ibid. 563), judicial (11 Mass. 227; 11 S. & R. 429 adopted in 2 Pet. 167-8), or special (20 Johns. 739-40; 2 Dow. P. C. 521, &c.), *unless an appeal is provided for, or other revision, by some appellate or supervisory tribunal, is prescribed by law.* The principles of these cases are too important not to be referred to, and though time does not admit of their extraction, and embodying in our opinion, we have no hesitation in declaring, that they meet with our entire concurrence, so far as applicable to this case."

*United States v. Arredondo*, 31 U. S. 691, 729,  
8 L. ed. 547;

*New Dunderberg Mining Co. v. Old*, 79 Fed. 598,  
25 CCA 116;

*Bradley v. Dels Lbr. Co.*, 105 Wis. 245, 252, 81  
N. W. 396;

*Beard v. Federy*, 70 U. S. 478;

And to the same effect see:

*Connoyer v. Schaeffer*, 89 U. S. 254;

*Burgess v. Gray*, 57 U. S. 48;

*Lee v. Johnson*, 116 U. S. 48;

*Chouteau v. U. S.*, 34 U. S. 137;

*Haydel v. Dufresne*, 58 U. S. 23;

*Noble v. Union River Logging R. Co.*, 147 U. S. 165, 172.

#### *Point Four.*

It is a well settled principle that the courts of a foreign state have no visitatorial powers over a fraternal corporation, such power belonging exclusively to the state creating such corporation.

*Eberhard v. Northwestern Mutual Life Ins. Co.*,  
210 Fed. 520.

#### SECOND ASSIGNMENT OF ERRORS.

The second error complained of is as follows:

The Supreme Court of the State of Nebraska erred in holding that no legislation of said Supreme Lodge Knights of Pythias affecting those of its members holding insurance certificates, is valid and effective unless the membership of said Supreme Lodge shall be composed entirely of members holding insurance certificates and shall always be biennially elective by the members holding such insurance certificates, whereas, the Federal Statute creating such corporation (28 U. S. Statutes at Large, pp. 96, 97), makes no such restriction and expressly creates the officers and members of the Supreme Lodge Knights of Pythias and their successors, "as a body corporate," giving certain enumerated powers thereto, one of which is to issue insurance certificates to those of its members desiring same."

(Tr., p. 333, par. 2.)

*Point Five.*

The courts of one state will not undertake to supervise the rates of insurance fixed by a foreign corporation and will not enjoin the collection of such rate.

*Clark v. Mutual Reserve Fund Life Association*,  
14 App. Cas. (D. C.) 154, 43 LRA 390;

*Condren v. Mutual Reserve Fund Life Association*,  
89 Md. 99, 44 LRA 149, 73 Am. St. 169, 42  
Atl. 944;

*Pierce v. Equitable Life Assurance Society*, 145  
Mass. 56, 1 Am. St. 433, 12 N. E. 858;

*Smith v. Mutual Life Ins. Co.*, 14 Allen 336;

*Ebert v. Mutual Reserve Fund Life Association*,  
81 Minn. 116, 83 N. W. 506, 834, 84 N. W. 457;

*People v. Brotherhood of Painters, Decorators and  
Paperhangers of America*, 218 N. Y. 115, 112  
N. E. 752;

*Howard v. Mutual Reserve Fund Life Association*,  
125 N. C. 49, 45 LRA 853, 34 S. E. 199;

*Royal Fraternal Union v. Lunday*, 51 Tex. Civ.  
App. 637, 113 S. W. 185;

*Taylor v. Mutual Reserve Fund Life Association*,  
97 Va. 60, 45 LRA 621, 33 S. E. 385;

*Talbert v. Modern Woodmen of America*, 83 Wash.  
287, 145 Pac. 183.

*Point Six.*

The levying of assessments upon its members by a mutual insurance company or by a fraternal society is a matter relating to the internal affairs of such corporation and the

courts of another state have no jurisdiction to strike down such assessments.

- Clark v. Mutual Reserve Fund Life Association*, 14 App. Cas. (D. C.) 154, 43 LRA 390;  
*Condon v. Mutual Reserve Fund Life Association*, 89 Md. 92, 93, 73 Am. St. 169, 44 LRA 149;  
*State v. Denton*, 229 Mo. 187, 138 Am. St. 417, 129 S. W. 709.  
*Brenizer v. Supreme Council Royal Arcanum*, 141 N. C. 409, 6 LRANS 235, 53 S. E. 835;  
*Howard v. Mutual Reserve Fund Life Association*, 125 N. C. 49, 45 LRA 853, 34 S. E. 199;  
*Royal Fraternal Union v. Lunday*, 51 Tex. Civ. App. 637, 113 S. W. 185;  
*Taylor v. Mutual Reserve Fund Life Association*, 97 Va. 60, 45 LRA 621, 33 S. E. 385;  
*State v. Shain*, 245 Mo. 78, 149 S. W. 479.

#### *Point Seven.*

Especially is this true where the courts of the domiciliary state have construed the by-laws and charter of such corporation and have declared such assessments valid.

- Supreme Council Royal Arcanum v. Green*, 237 U. S. 531, LRA 1916A 771, 59 L. ed. 1089;  
 (Reversing 206 N. Y. 591, 100 N. E. 411.)  
*Gaines v. Supreme Council Royal Arcanum*, 140 Fed. 978;  
 (Injunction against increase of rates denied by Federal Court in Tennessee, defendant being a Massachusetts Corporation.)

*Supreme Council Royal Arcanum v. Brashears*, 39  
Md. 624, 73 Am. St. 244, 43 Atl. 866;  
*Hartford Life Ins. Co. v. Ibs*, 237 U. S. 662, 59 L.  
ed. 1165, LRA 1916A, 765.

*Point Eight.*

The Supreme Lodge Knights of Pythias now has and maintains a representative form of government. Its government is exactly the same as at the beginning. It has never been changed and the fact that others besides those holding certificates of insurance may be eligible not only to vote for, but to serve as supreme representatives to the Supreme Lodge does not deprive it of its representative form of government.

13 Harvard Law Review 67 (Historical Survey by  
Prof. Dicey) ;  
*Westerman v. Supreme Lodge Knights of Pythias*,  
196 Mo. 670, 94 S. W. 470, 5 LRANS 1114;  
*Tice v. Supreme Lodge Knights of Pythias*, 204  
Mo. 349, 100 S. W. 519;  
*Saunders v. Robinson*, 144 Mass. 306, 10 N. E. 815.

THIRD ASSIGNMENT OF ERRORS.

The third assignment of errors is as follows:

"The Supreme Court of the State of Nebraska erred in holding that the power to strike down the statutes enacted by said Supreme Lodge Knights of Pythias inhered in said state of Nebraska, after the validity of said questioned statute had been finally decided, and held valid in two decisions of the Honorable, the Supreme Court of the United States.

*Point Nine.*

Where the highest court of the jurisdiction creating the corporation has declared its charter powers, such decision will be followed by the courts of other states in which such corporation may have members.

- Supreme Council Royal Arcanum v. Green*, 237 U. S. 531, 59 L. ed. 1089, LRA 1916A, 771;  
*Hartford Life Ins. Co. v. Ibs*, 237 U. S. 662, 59 L. ed. 1165, LRA 1916A, 765;  
*Hartford Life Ins. Co. v. Barber*, 245 U. S. 146, 62 L. ed. 208.

*Point Ten.*

The contract of membership in a fraternal beneficiary society is made with reference to, and includes the constitution and by-laws or Supreme Statutes of the order, of which every member is bound to take notice, whether especially referred to in the contract or not, and whether or not such constitution and by-law is known to the member.

- Bauer v. Sampson Lodge Knights of Pythias*, 102 Ind. 262, 267;  
*Supreme Lodge Knights of Pythias v. Knight*, 117 Ind. 489, 3 LRA 409;  
*Supreme Lodge Knights of Pythias v. La Malta*, 95 Tenn. 157, 30 LRA 838;  
*Mutual Assurance Society v. Korn*, 7 Cranch 396, 3 L. ed. 383;  
*Fullenwider v. Supreme Council Royal League*, 180 Ill. 621, 625;



- Commonwealth v. Massachusetts Mutual Ins. Co.*,  
112 Mass. 116;  
*Modern Woodmen of America v. Tevis*, 117 Fed.  
369;  
*Shipman v. Protected Home Circle*, 174 N. Y. 398,  
409.

*Point Eleven.*

The right of a fraternal beneficiary society to readjust and to increase its rates, where desirable, or necessary, is inherent in the very nature of such society.

- Supreme Lodge Knights of Pythias v. Mims*, 241  
U. S. 574, 60 L. ed. 1179;  
*Supreme Lodge Knights of Pythias v. Smyth*, 245  
U. S. 594, 62 L. ed. 492;  
*Fullenwider v. Supreme Council Royal League*, 180  
Ill. 621, 54 N. E. 485, 72 Am. St. 239;  
Note, 31 LRANS 416-417;  
*Wineland v. Knights of Maccabees*, 148 Mich. 608;  
*Reynolds v. Supreme Council Royal Arcanum*, 192  
Mass. 150, 78 N. E. 129, 7 LRANS 1154;  
*Miller v. National Council Knights and Ladies of  
Security*, 69 Kans. 234, 76 Pac. 830;  
*Supreme Lodge Knights of Pythias v. Knight*, 117  
Ind. 489, 3 LRA 409;  
*Conner v. Supreme Commandery Golden Cross*,  
117 Tenn. 549, 97 S. W. 306;  
*Gilmore v. Knights of Columbus*, 77 Conn. 58, 58  
Atl. 223, 107 Am. St. 17, 1 Am. & Eng. Ann.  
Cas. 715;

*Shepperd v. Bankers Union of the World*, 77 Neb.  
85, 108 N. W. 188;

*Norton v. Catholic Order of Foresters*, 138 Ia. 464,  
114 N. W. 893, 24 LRANS 1030.

#### FOURTH ASSIGNMENT OF ERRORS.

The Supreme Court of the State of Nebraska erred in refusing to give effect to the judgment and decree of the Honorable, The United States District Court for the District of Indiana in the case of *Joseph Holt et al. v. Supreme Lodge Knights of Pythias*, wherein several members of said order who held insurance certificates therein, and who were similarly situated with the plaintiff herein, in all respects, and who brought said suit in their own behalf and in behalf of all others similarly situated, for the express object and purpose of having said statutes increasing the rates, which are the same statutes involved in this action, set aside and held invalid and void, and to enjoin said Supreme Lodge Knights of Pythias from enforcing same, and which judgment and decree was appealed from, and affirmed, by the Honorable Circuit Court of Appeals for the Seventh Circuit which judgments and decrees are now in full force and effect (235 Fed. 885, 149 CCA 197, 248 U. S. 588, 63 L. ed. 434).

#### *Point Twelve.*

Where a class suit is brought by the plaintiff, or plaintiffs on his, or their own behalf and on behalf of all others similarly situate, all persons standing in such relation are considered as parties to the suit and are conclusively bound by the judgment and decree therein.

- Mandeville v. Riggs*, 2 Pet. 482;  
*Smith v. Swormstedt*, 16 How. 288, 14 L. ed. 942  
 (Methodist Book Concern Case),  
*Bacon v. Robertson*, 18 How. 480, 15 L. ed. 499;  
*Cockburn v. Thompson*, 16 Ves. 321, 326, 328, 33  
 E R. 1005;  
*Hartford Life Ins. Co. v. Ibs*, 237 U. S. 662, 59 L.  
 ed. 1165, LRA 1916A, 765;  
*Duvall v. Synod of Kansas*, 222 Fed. 669, 138 CCA  
 217;  
*Watson v. National Life, etc., Co.*, 162 Fed. 7, 12,  
 88 CCA 380;  
*Lovell v. St. Louis Mut. Life Ins. Co.*, 111 U. S. 264,  
 28 L. ed. 423;  
*Supreme Tribe of Ben Hur v. Cauble*, 255 U. S.  
 356, 65 L. ed. 673;  
*Supreme Council Royal Arcanum v. Green*, 237 U.  
 S. 531, 59 L. ed. 1089, LRA 1916A, 771;  
*Looney v. Eastern Texas R. Co.*, 247 U. S. 214, 62  
 L. ed. 1084;  
 Equity Rule 38, U. S. Supreme Court 1912, 226 U.  
 S. 659, 57 L. ed. 1643;  
 1 Foster, Federal Practice (6th Ed.), § 114.

### *Point Thirteen.*

Such judgment or decree is *res judicata* in all subsequent suits by or between said society and all members thereof and their beneficiaries as to all matters actually litigated within the issues or which might properly have been litigated with-in said issues.

- Fischli v. Fischli*, 1 Blackf. 360, 12 Am. Dec. 251;  
*Alerding v. Allison*, 170 Ind. 252, 258, 127 Am. St.  
 363 note;  
*State v. Buffalo County*, 6 Neb. 461;  
*Slater v. Skeirving*, 51 Neb. 108, 70 N. W. 492, 66  
 Am. St. 444;  
*Harris v. Harris*, 36 Barb. 88;  
*Ruckman v. Union Railway Co.*, 45 Or. 578, 78 Pac.  
 748, 69 LRA 480;  
*Bates v. Bodie*, 245 U. S. 520, 526, 62 L. ed. 444;  
*Mitchell v. First National Bank of Chicago*, 180 U.  
 S. 471, 45 L. ed. 627;  
*Dowell v. Applegate*, 152 U. S. 327, 345, 38 L. ed.  
 463;  
*United States v. Haytien Republic*, 154 U. S. 118,  
 129, 38 L. ed. 930;  
*Dimock v. Revere Copper Co.*, 117 U. S. 559, 566,  
 29 L. ed. 994;  
*Harshman v. Knox County*, 122 U. S. 306, 317, 30  
 L. ed. 1152.

#### *Point Fourteen.*

A new ground of invalidity, or the omission thereof, which would have given the plaintiffs a valid cause of action, or any omitted facts which would have made out the plaintiff's case in such suit, does not render the judgment less conclusive or less binding.

*Bell County, etc., School v. Pineville Graded School*,  
 19 Ky. Law Rep. 789, 42 S. W. 92 (a statute  
 held valid. Presumed to be based upon all possible  
 objections to validity);

- Jordan v. Van Epps*, 85 N. Y. 427, 436 (defendant failed to set up all her claims of title) ;
- Cannon v. Castleman*, 162 Ind. 6 (failed to allege fraud in contract) ;
- Martin v. Abbott*, 1 Neb. (Unof.) 59, 95 N. W. 356 ;
- Singer v. Hutchinson*, 183 Ill. 606, 56 N. E. 388, 75 Am. St. 133 (failure to set up all defenses) ;
- Hilgersen v. Hicks*, 201 Ill. 374, 66 N. E. 360 ;
- Holt County v. National Life Ins. Co.*, 80 Fed. 686, 25 CCA 469 ;
- Board of Commissioners of Lake County v. Platt*, 79 Fed. 567, 25 CCA 87 ;
- Dimock v. Revere Copper Co.*, 117 U. S. 559, 29 L. ed. 994 ;
- Andrews Bros. Co. v. Youngstown Coke Co.*, 86 Fed. 585, 596, 30 CCA 293 ;
- Reynolds v. Mandel*, 175 Ill. 615, 51 N. E. 649 ;
- McIntire v. Williamson*, 63 Kan. 279, 65 Pac. 244 ;
- Kloke v. Gardels*, 52 Neb. 117, 71 N. W. 955.

### *Point Fifteen.*

When a question is necessarily decided in effect, though not in express terms, between the parties to a suit, they can not raise the same question in any other suit or in any other forum.

- Gregory v. Molesworth*, 3 Atkins 626, 26 E. R. 1160 ;
- Henderson v. Henderson*, 3 Hare 100, 67 E. R. 313 ;
- Franke v. Franke*, 15 Ind. App. 529, 549 ;
- Griffin v. Wallace*, 66 Ind. 410, 417 ;

- Bates v. Bodie*, 245 U. S. 520, 526, 62 L. ed. 444;  
*National Circle, Daughters of Isabella v. National  
 Order Daughters of Isabella*, 270 Fed. 723;  
*Straus v. American Publishers Assn.*, 201 Fed.  
 306, 119 CCA 544;  
*Sperry, etc., Co. v. Blue*, 202 Fed. 82 120 CCA 1;  
*Mitchell v. First National Bank of Chicago*, 180 U.  
 S. 471, 45 L. ed. 627;  
*Mazzariello v. Doherty*, 204 Fed. 245, 122 CCA 513;  
*Union Pacific R. Co. v. Wyler*, 158 U. S. 285, 39  
 L. ed. 983;  
*Boston, etc., R. Co. v. Hurd*, 108 Fed. 116, 47 CCA  
 615, 56 LRA 192;  
*Cotter v. Boston, etc., St. R. Co.*, 190 Mass. 302,  
 76 N. E. 910;  
*Columbus v. Webster Mfg. Co.*, 84 Fed. 592, 28  
 CCA 225, 43 LRA 195.

#### *Point Sixteen.*

Where a class suit is brought by the plaintiff on his own behalf, and on behalf of all others similarly situate, all persons standing in such relation are considered as parties to the suit and are bound by the judgment or decree therein.

- 1 Foster, Federal Practice (6th ed.), § 114;  
*Smith v. Swormstedt*, 16 How. 288, 14 L. ed. 942  
 (Methodist Book Concern Case);  
*Mandeville v. Riggs*, 2 Pet. 482;  
*Cockburn v. Thompson*, 16 Ves. 321, 326, 328, 33  
 E. R. 1005;  
*Bacon v. Robertson*, 18 How. 480, 15 L. ed. 499;

- Hartford Life Ins. Co. v. Ibs*, 237 U. S. 662, 59 L. ed. 1165, LRA 1916A, 765;  
*Duvall v. Synod of Kansas*, 222 Fed. 669, 138 CCA 217;  
*Watson v. National Life, etc., Co.*, 162 Fed. 12, 88 CCA 380;  
*Harmon v. Auditor*, 123 Ill. 132, 5 Am. St. 506, 13 N. E. 161, 164 (bond holders);  
*Supreme Tribe of Ben Hur v. Cauble*, 255 U. S. 356, 65 L. ed. 673;  
*Equity Rule 38*, U. S. Sup. Ct. 1912, 226 U. S. 659, 57 L. ed. 1643;  
*Supreme Council Royal Arcanum v. Green*, 237 U. S. 531, 59 L. ed. 1089, LRA 1916A, 771 (reversing 206 N. Y. 591, 100 N. E. 411);  
*Looney v. East Texas R. Co.*, 247 U. S. 214, 62 L. ed. 1084.

#### *Point Seventeen.*

A judgment or decree constitutes a conclusive estoppel, until set aside, between the parties and their privies, as to all matters litigated, or which might have been litigated under the issues.

- Dowell v. Applegate*, 152 U. S. 327, 345, 38 L. ed. 463;  
*United States v. Haytien Republic*, 154 U. S. 118, 129, 38 L. ed. 930;  
*Dimock v. Revere Copper Co.*, 117 U. S. 566, 29 L. ed. 994;  
*Harshman v. Knox County*, 122 U. S. 306, 317, 30 L. ed. 1152.

*Point Eighteen.*

A plaintiff can not split a cause of action so as to litigate part of it in one suit and part in another; so the plaintiffs in the Holt case were required to present all objections to the validity of the statutes raising the rates, in their complaint or be barred thereafter from asserting them.

- People v. Detroit, etc., R. Co.*, 157 Mich. 144, 121 N. W. 814;  
*Richardson v. Opelt*, 60 Neb. 180, 82 N. W. 377;  
*Johnson v. Payne*, 11 Neb. 269, 9 N. W. 81;  
*Beck v. Devereux*, 9 Neb. 109, 2 N. W. 365;  
*United States, ex rel. v. City of New Orleans*, 98 U. S. 381;  
*United States, ex rel. v. County Court of Knox County*, 122 U. S. 306, 30 L. ed. 1152;  
*Ralls County v. United States, ex rel.*, 105 U. S. 733, 26 L. ed. 1220;  
*Mayor of Davenport v. United States, ex rel.*, 76 U. S. 409, 19 L. ed. 704;  
*Grand Island, etc., R. Co. v. Baker*, 6 Wyo. 394, 71 Am. St. 943, 34 LRA 835, 841;  
*Mashlonpah v. Mayhew*, 138 Wis. 561, 119 N. W. 826;  
*Nauyalis v. Philadelphia, etc., Co.*, 270 Fed. 93, — CCA —;  
*Werlein v. City of New Orleans*, 177 U. S. 390, 44 L. ed. 817.



## FIFTH ASSIGNMENT OF ERRORS.

The Fifth assignment of errors is as follows, to-wit:

The Supreme Court of the State of Nebraska erred in holding that the plaintiff in this action was not bound by the judgment and decree of the District Court of the United States for the District of Indiana in the case of *Joseph Holt et al., v. Supreme Lodge Knights of Pythias*, which suit was brought and maintained by said Joseph Holt and others, on behalf of themselves and of all others similarly situate, and wherein the validity of the supreme statutes of said Supreme Lodge Knights of Pythias, was affirmed and set at rest, the plaintiff herein, being similarly situate with the plaintiffs in said Holt case \* \* \* and the same being a right guaranteed to the plaintiff in error under and by virtue of Article 4, Section 1, of the Federal Constitution, guaranteeing full faith and credit by one state to the judicial proceedings of every other state.

(Tr., p. 333, par. 4.)

*Point Nineteen.*

Article 4, Section 1, of the Federal Constitution is in part as follows:

"Full faith and credit shall be given in each state to the public acts, records and judicial proceedings of every other state. And the Congress may by general laws prescribe the manner in which such acts, records and proceedings shall be proved, and the effect thereof."

*Point Twenty.*

The judgments of the Federal Courts in the various states have the same binding effect upon the parties and their privies, as the judgments of the State courts.

- Metcalf v. City of Watertown*, 153 U. S. 671, 38 L. ed. 861;  
*Union, etc., Bank v. Memphis*, 189 U. S. 71, 47 L. ed. 712;  
*Hancock National Bank v. Farnum*, 176 U. S. 640, 45 L. ed. 619;  
*First National Bank v. City of Covington*, 129 Fed. 792, 804;  
*Old Dominion Copper, etc., Co. v. Bigelow*, 203 Mass. 159, 40 LRANS 314, 89 N. E. 193;  
*Northern Assurance Company v. Grand View Building Assn.*, 203 U. S. 106, 51 L. ed. 109;  
*Glencove Granite Co. v. City Trust, etc., Co.*, 118 Fed. 383, 55 CCA 212 (certiorari denied, 187 U. S. 649, 47 L. ed. 348);  
*Alkine Grocery Co. v. Richesin*, 91 Fed. 79, 83.

*Point Twenty-one.*

A judgment of the Federal Court in a state is entitled to the same credit in another state as the judgment of the State Court of equal rank of the state wherein the federal judgment was rendered.

- Metcalf v. City of Watertown*, 153 U. S. 671, 38 L. ed. 861;  
*Union, etc., Bank v. Memphis*, 189 U. S. 71, 47 L. ed. 712;

*Hancock National Bank v. Farnum*, 176 U. S. 640,  
44 L. ed. 619;

*Woolery v. Grayson*, 110 Ind. 149, 10 N. E. 935;

*Cincinnati, etc., R. Co. v. Wynne*, 14 Ind. 385;

*Fidler v. Gilchrist*, 60 Ind. App. 363, 109 N. E. 796;

*Crescent City, etc., Co. v. Butcher's Union, etc.*,  
120 U. S. 141, 157, 30 L. ed. 614, 617;

*Dupasseeur v. Rochereau*, 21 Wall. 130, 135, 22 L.  
ed. 588, 590 (state law);

*Embry v. Palmer*, 107 U. S. 3, 27 L. ed. 346;

*Pittsburg, etc., R. Co. v. Long Island Loan, etc.,  
Co.*, 172 U. S. 493, 43 L. ed. 528.

#### *Point Twenty-two.*

The Supreme Court of the United States has the exclusive final jurisdiction to determine whether the proper effect has been given by the courts of one state to the judgments of courts in other states.

*Hadacheck v. Chicago, etc., R. Co.*, 74 Neb. 385,  
104 N. W. 878.

#### *Point Twenty-three.*

Under the Federal Constitution a judgment rendered by the courts in one state must be given the same implication and force in all other states which it has in the courts of the state where rendered, and whatever pleas could be made thereto in the courts of such state, and no others, can be made to it in the foreign court.

*Hampton v. McConnell*, 3 Wheat. 234, 4 L. ed. 378,  
note top page 804;

- Mills v. Durgee*, 7 Cranch 481, 3 L. ed. 411, note top page 576;  
*American Mutual Life Ins. Co. v. Mason*, 159 Ind. 15, 16, 18 N. E. 525;  
*Suydam v. Barber*, 18 N. Y. 468, 471, 75 Am. Dec. 256;  
*Barras v. Bidwell*, 3 Woods 7, Fed. Cas. No. 1039;  
*Wilcox v. Cassick*, 2 Mich. 168;  
*Fletcher v. Ferrel*, 9 Dana (Ky.) 377, 35 Am. Dec. 148;  
*Bank v. Wheeler*, 28 Conn. 439, 73 Am. Dec. 684;  
*Fauntleroy v. Lum*, 210 U. S. 230, 52 L. ed. 1039;  
*Sharon v. Hill*, 26 Fed. 337, 391;  
*Morris v. Burgess*, 116 N. C. 42, 21 S. E. 26.

#### THE SIXTH ASSIGNMENT OF ERROR.

The sixth assignment of error is as follows:

The Supreme Court of the State of Nebraska erred in holding that the plaintiff in this action was not bound by the judgment and decree of the District Court of the United States for the District of Indiana in the case of *Joseph Holt, et al. v. Supreme Lodge Knights of Pythias*, which suit was brought and maintained by said Joseph Holt and others, on behalf of themselves and of all others similarly situate, and wherein the validity of the supreme statutes of said Supreme Lodge Knights of Pythias, was affirmed and set at rest, the plaintiff herein being similarly situate with the plaintiffs in said Holt case, and the same being a right guaranteed to the plaintiff in error by virtue of § 905 R. S. U. S., § 1519 U. S. Comp. Stat. 1916, providing that the records and judicial proceedings of any state or territory or of any

such country, shall have such faith and credit given to them in every court within the United States as they may have by law or usage in the courts of the State from which they are taken. (Tr., p. 334.)

*Point Twenty-four.*

The force and validity of a judgment of another state must be determined by the law of the state rendering the same.

Section 905 R. S. U. S., § 1519, U. S. Comp. Statutes 1916, among other things provides that the records and judicial proceedings in one state "shall have such faith and credit given to them in every court within the United States as they have by law or usage in the courts of the State from whence the said records are or shall be taken."

*Christmas v. Russell*, 5 Wall. 290, 18 L. ed. 475.

(An action in Mississippi Federal Court on a Kentucky judgment enforcing a Mississippi contract. Held, that the Mississippi state statute prohibiting Mississippi state courts from taking jurisdiction and enforcing judgments taken in other states where Mississippi would not render such judgments in her own courts, is void.)

*Converse v. Hamilton*, 224 U. S. 243, 56 L. ed. 749.

(Wisconsin Court declines to permit suit on judgment of Minnesota Court enforcing double liability of stockholders on the ground that Wisconsin did not enforce such liability against her own people. Held, Wisconsin decision must be reversed.)

*Point Twenty-five.*

A final judgment or decree in the state of Indiana conclusively settles all questions within the issues in a cause, and also all other questions involved in the subject-matter of the litigation which might have been properly litigated in the action.

- Fischli v. Fischli* (1825), 1 Blkf. 360, 12 Am. Dec. 251;  
*Crouse v. Holman*, 19 Ind. 30, 36;  
*Richardson v. Jones*, 58 Ind. 240 243;  
*Marshall v. Stewart*, 80 Ind. 189;  
*Ballard v. Franklin Life Ins. Co.*, 81 Ind. 239;  
*Elwood v. Beymer*, 100 Ind. 504;  
*Indiana, etc., R. Co. v. Allen*, 113 Ind. 581, 587;  
*Wilson v. Buell*, 117 Ind. 315, 317, 20 N. E. 231;  
*Hoefgen v. Harness*, 148 Ind. 224, 229, 47 N. E. 470;  
*Finley v. Cathcart*, 149 Ind. 470, 477, 48 N. E. 586, 49 N. E. 381;  
*Walker v. Walker*, 150 Ind. 317-325, 50 N. E. 68;  
*Maynard v. Waidlich*, 156 Ind. 562, 573, 60 N. E. 348;  
*Skelton v. Sharp*, 161 Ind. 384-386, 67 N. E. 535;  
*Cannon v. Castleman*, 162 Ind. 6-8, 69 N. E. 455;  
*Ryan v. Rhodes*, 167 Ind. 121, 126, 76 N. E. 249, 78 N. E. 330;  
*Alerding v. Allison*, 170 Ind. 252, 258, 83 N. E. 1006, 127 Am. St. 363;  
*Knotts v. Clark Construction Co.*, 131 N. E. (Ind.) 921.

### THE SEVENTH ASSIGNMENT OF ERRORS.

The seventh assignment of errors is as follows:

The Supreme Court of the State of Nebraska erred in holding that the plaintiff, being the defendant in error herein, is not estopped by virtue of his membership in said Supreme Lodge Knights of Pythias as created by federal statute, 28 U. S. Stat. at Large, pp. 96, 97, from again raising the question of the validity of the rates enacted by said Supreme Lodge Knights of Pythias in 1910, for the reason that Joseph Holt and others in their own behalf, and in behalf of all others similarly situate, including the defendant in error's assured, brought and maintained a suit for the purpose of declaring void the same statutes involved in this action, and wherein a judgment and a decree of the United States District Court for the District of Indiana was rendered that said statutes were valid and obligatory. (Tr., p. 334, par. 2.)

#### *Point Twenty-six.*

Apart from the fact that a stockholder is conclusively presumed to be represented in and to be a party to a class suit, a judgment duly rendered by a court of competent jurisdiction which is binding upon the corporation, is equally binding upon the stockholders of such corporation, and they are estopped after litigation by their company from again raising the same question in a suit by themselves against the same corporation.

*Converse v. Ayer*, 197 Mass. 443, 84 N. E. 98;

*Howarth v. Lombard*, 175 Mass. 570, 56 N. E. 888,  
49 LRA 301;

*King v. Cochrane*, 76 Vt. 141, 56 Atl. 667, 104 Am. St. 922;

*Selig v. Hamilton*, 234 U. S. 652, 58 L. ed. 1518;

*Converse v. Hamilton*, 224 U. S. 243, 56 L. ed. 749;

*Bernheimer v. Converse*, 206 U. S. 516, 51 L. ed. 1163;

*Irvine v. Baker*, 225 Fed. 834;

*Spargo v. Converse*, 191 Fed. 823, 112 CCA 337;

*Goss v. Carter*, 156 Fed. 746, 84 CCA 402;

*Johnson v. Libby*, 111 Me. 204, 88 Atl. 647, Ann. Cases 1916-C 681.

(The above cases were for the recovery of stockholders' liability, they are strictly analogous to the case at bar for the reason that in this case the society had increased its rates so as to mature its obligations and the present suit was brought to restrain the society from enforcing the increased liability.)

#### THE EIGHTH ASSIGNMENT OF ERRORS.

The eighth assignment of errors is as follows:

The Supreme Court of the State of Nebraska erred in holding that the Supreme Lodge Knights of Pythias did not have and maintain, at the time of the enactment of the statutes in question, increasing the rates, a representative form of government, whereas it had and maintained at said time and ever, the same form of government which it had at its creation by federal statute, 28 U. S. Statute at Large, pp. 96, 97.



*Point Twenty-seven.*

Where a corporation is created with a certain form of government and it continues to exercise its duties in strict accordance with the form designated and prescribed by said statute creating it, neither its members, nor their privies, have the right to attack such form of government in an action for benefits.

*Thomas v. Musical Mutual Protective Union*, 121 N. Y. 45, 24 N. E. 24, 8 L. R. A. 175;

*Bauer v. Sampson Lodge Knights of Pythias*, 102 Ind. 262;

*People v. St. George's Society*, 28 Mich. 261;

*Kent v. Quicksilver Mining Company*, 78 N. Y. 159.

## THE NINTH ASSIGNMENT OF ERRORS.

The ninth assignment of errors is as follows:

The Supreme Court of the State of Nebraska erred in holding that the Supreme Lodge Knights of Pythias did not have and maintain at the time of the enactment of the statutes in question, increasing the rates, a representative form of government, whereas it was alleged in the answer and shown by the evidence that said question was expressly decided adversely by the judgment and decree of the United States District Court for the District of Indiana, in the case of Joseph Holt and others against Supreme Lodge Knights of Pythias, wherein Joseph Holt and others sued in their own behalf and in behalf of all others similarly situate, including defendant in error's assured, to set aside said statutes increasing the rates, as invalid and void. (Tr., p. 334, par. 4.)

*Point Twenty-eight.*

The question whether the Supreme Lodge Knights of Pythias maintained a representative form of government at the time of the increase of rates involved in this cause was directly involved in the issues in the Holt case and in the special findings in said cause. It was expressly found that the plaintiff in error did have and maintain a representative form of government at said time and at all other times and the said special findings were specially approved by the court; and judgment was rendered thereon for the plaintiff in error.

The defendant in error herein is therefore concluded by said judgment in said Holt case from litigating said question of representative form of government over again in this or any other cause of action.

(See authorities heretofore cited under points 13-18, pages 41-46.)

## BRIEF OF ARGUMENT.

By this action defendant in error seeks to recover upon a benefit certificate issued by the plaintiff in error to her decedent, designating the defendant in error as his beneficiary. The decedent paid his dues regularly until January 1, 1911, at which time the newly enacted increased rates took effect. He refused to pay the increased rate but continued to tender the old rate to the date of his death. The real question at issue is the validity of the increased rates. At his death, proper proofs were submitted and liability denied, and this action was begun. At the first trial of the cause the court found in favor of the plaintiff in error. The judgment following said decision was reversed by the Supreme Court of Nebraska on the ground that the plaintiff in error did not have nor maintain a representative form of government and therefore the statutes increasing the rates were void. A second trial of said cause resulted in a decision in favor of the defendant in error and the judgment rendered thereon was affirmed by the Supreme Court upon the same ground, that is, that the plaintiff in error did not have nor maintain a representative form of government and therefore the increase of rates was void.

### PLAINTIFF IN ERROR CREATED BY FEDERAL STATUTES.

The plaintiff in error was created by a special act of Congress (28 U. S. Stat. at Large, pp. 96-97) (Tr., pp. 50-51). The entire rights and charter powers of this society are contained within the terms of said federal statute. A reference thereto will show that certain individuals, naming them, to-

gether with the officers and members of the Supreme Lodge, and "their successors, be and they are hereby incorporated and made a body politic and corporate." The stipulation in evidence in this case shows that the Supreme Lodge of said corporation has remained the same from the day of its incorporation to the present time and the method of selecting the members thereof has remained the same from that day until now.

It is evident, therefore, that if the plaintiff in error's supreme statute of 1910, increasing the rates—the one in question here—was not duly enacted, then there are no laws nor regulations of any kind which have been duly enacted and the corporation has been transacting its business since 1894 under a set of Supreme Statutes and laws which are wholly void. The only workable principle of law which could be applicable under such circumstances would be that of estoppel. Estoppel as against the corporation, but not in its favor. In other words, the members of the corporation and third persons may, at their pleasure, enforce claims and liabilities against said corporation, but it may not bring any action and may not defend against any that are brought, by reason of the supposed fact that it has not had nor maintained a representative form of government sufficient to make its action valid.

#### RATE LITIGATION.

The increase of rates, the validity of which constitutes the sole question in this case, has been the subject of more or less litigation since its enactment. A short history of this litigation will be useful in the disposition of this case. Immediately after January 1, 1911, the date when said in-

crease went into effect, many actions were brought in various states of the Union. There were more than 100 filed in the State of Texas alone. Many were filed in the State of Mississippi, some in Tennessee, some in Nebraska, some in Missouri, some in New York, some in Indiana, and some in a few other states.

### THE HOLT CASE.

On January 25, 1911, a suit was filed in the District Court of the United States for the District of Indiana, by Joseph Holt and nineteen others, citizens of the State of Louisiana, "on behalf of themselves and all other persons similarly situate," against the plaintiff in error for the express purpose of having said rates adjudged invalid and for an injunction to restrain the officers of the insurance department from putting into execution the said increase of rates, and also asking for the appointment of a receiver to take charge of the assets of said corporation and to administer the same. These plaintiffs were members of the fourth class, which was the same class to which the decedent belonged on whose certificate this action is based. The plaintiffs therein, and the decedent herein, were all members of the fourth class holding certificates in identical words with the exception of names and dates. An amended answer was filed in this case and also a cross-complaint was filed by the plaintiff in error. The plaintiff in said case filed a reply and in the course of this litigation which was heard by the Master in Chancery one of the principal questions to be decided and which was actually decided, was the validity of the statutes increasing the rates. The validity of the same statutes is the sole question involved in this case. The Master in Chancery reported his special finding of facts (Tr., pp. 208-

244). The third finding, in part, is as follows (Tr., p. 210, point three) :

"That said original corporation was during its entire existence and said defendant [plaintiff in error] is and has been since its incorporation a fraternal beneficiary society; that neither the defendant nor its said predecessor was organized or was ever conducted for profit; that each of said corporations during the entire period of their existence respectively possessed a lodge system and a ritualistic form of work and had a representative form of government."

Finding No. 27, is as follows (Tr., p. 243, point 27) :

"That the legislation of the defendant [plaintiff in error] with reference to the creation of the fifth class, the transfer of members from the fourth class, *the rerating of the fourth class, which became effective January 1, 1911,* and the use of the expense fund of the Insurance Department for the joint expenses of the fourth and fifth classes *was all duly and legally adopted by the said defendant in pursuance to the constitution and laws of said defendant* and in accordance with the mode therein prescribed for the adoption of amendments and the enactment of new legislation."

The Master stated conclusions of law in favor of the defendant [plaintiff in error].

The complainants filed their exceptions to the Master's report. The fourth exception so filed by said complainants was in part as follows (p. 246, Par. 4) :

"To the 27th finding of fact, in this, that the Master erroneously found therein that the legisla-

tion of the defendant with reference to the \* \* \* *rerating of the fourth class, which became effective Jan. 1, 1911*" \* \* \* *was all duly and legally adopted by the defendant in pursuance to the constitution and laws of the defendant, and in accordance with the mode therein prescribed for the adoption of amendments and the enactment of new legislation."*

Said exception, and the argument of counsel thereon were duly heard by the judge of said Federal District Court and said exceptions were overruled and the report confirmed. A decree dismissing said bill of complaint for want of equity was entered (Tr., p. 250, Par. 3).

An appeal was duly prayed and perfected from said decree and the same was heard by the Circuit Court of appeals for the Seventh Circuit and by said court decided on July 18, 1916. The judgment of the District Court was affirmed. Said decision is found in Tr., pp. 251-254. See *Holt v. Supreme Lodge Knights of Pythias*, 235 Fed. 885, 149 CCA 197.

An appeal was perfected thereafter to the Supreme Court of the United States but said appeal was dismissed. *Holt v. Supreme Lodge Knights of Pythias*, 248 U. S. 588.

#### MIMS CASE.

One of the multitude of cases filed in the State courts of Texas after a hearing in the trial court was decided in favor of the plaintiff. An appeal was perfected to the Court of Civil Appeals of said State which court held that the legislation increasing the rates, here in question, was invalid and

void. The said Court of Civil Appeals affirmed the judgment of the trial court. See:

*Supreme Lodge Knights of Pythias v. Mims*, 167 S. W. (Tex. Civ. App. 835).

A writ of error was duly prayed and granted to the Supreme Court of the United States. This was the first of all of the cases to be heard by this Honorable Court. The judgment of said Court of Civil Appeals was reversed. *Supreme Lodge Knights of Pythias v. Mims*, 241 U. S. 574, 60 L. ed. 1179.

#### SMYTH CASE.

One Smyth brought his action against the plaintiff in error in the United States District Court for the Western District of New York. It was held by said court that the legislation increasing the rates here in question was invalid on the ground that it constituted a breach of plaintiff's contract. See *Smyth v. Supreme Lodge Knights of Pythias*, 198 Fed. 967.

An appeal therefrom was duly perfected by the Supreme Lodge which appeal was heard and decided by the Circuit Court of Appeals for the second circuit and the judgment of the district court was affirmed. See *Smyth v. Supreme Lodge Knights of Pythias*, 220 Fed. 438, 137 CCA 32.

An appeal was duly perfected from the judgment of the said Circuit Court of Appeals to this Court. This Court, on the authority of the Mims case, reversed the judgment of said Circuit Court of Appeals.

*Supreme Lodge Knights of Pythias v. Smyth*, 245 U. S. 594, 62 L. ed. 492.



It was held by this court, in said Mims case, that the legislation increasing the rates was legally enacted; that such increase was within the charter rights of the corporation, and withal, that it was the duty of the Supreme Lodge to establish and maintain rates sufficient to protect and mature all of the benefit certificates outstanding and to preserve and protect the life of the society so that it might properly fulfill its charter duty of furnishing to such members as might desire safe insurance payable to their designated beneficiaries.

The Supreme Court of the State of Mississippi, in a case appealed thereto, held that the corporation was acting within its charter power in increasing the rates and that all members were bound by said increased rates.

*Neuman v. Supreme Lodge Knights of Pythias*,  
110 Miss. 371, 70 So. 241, LRA 1916C, 1051.

A similar case was decided by the Supreme Court of Tennessee but is unreported. In none of these cases was the question of res judicata raised or insisted upon.

In the present case, however, the plaintiff in error has specially set up the defense of res judicata and is maintaining that the question of the validity of the legislation increasing the rates has been judicially determined in such a manner that all members of the fourth class are bound thereby. The Holt case was in all respects a class suit, brought by a large number of fourth class members on their own behalf and on behalf of all others similarly situated, which included the holders of all the certificates involved in this litigation. There should be an end to litigation sometime. There can be no question but that the entire

subject of the validity of these statutes and of this increase of rates was exhaustively examined and judicially determined by the Federal District Court for the District of Indiana, and the decree entered in that case is binding upon all members throughout the membership of the order.

The Honorable Supreme Court of the State of Nebraska held that the Supreme Lodge of said order was not constituted in accordance with the statute of Nebraska requiring fraternal orders to have and maintain a representative form of government. It is proper to state that the learned Chief Justice and one of the Associate Justices dissented from the decision in this case. The question presents itself whether the federal constitution guaranteeing full faith and credit to the judicial acts of the courts of other states, is applicable to a case like this. We have seen that the question of representative form of government was specifically litigated in the Holt Case and it was especially decided that the plaintiff in error did have and maintain at all times a representative form of government. It would seem that this question having been determined in a class suit, the same should be considered as forever settled, not only because the defendant in error's decedent herein, must be considered a party plaintiff in that suit, but also because the federal constitution provides for the full faith and credit to be given to said decision in all other states. This is not a proceeding by the state of Nebraska but is a private litigation based upon a contract executed by the plaintiff in error, and it is simply and solely a question between the insurer and the insured's beneficiary. It has been held many times that where a judgment is rendered in one state, said judgment is enforceable in any other state under and by virtue of the Fed-

eral Constitution. It is immaterial whether the cause of action upon which this judgment was rendered was cognizable by other states or not. The courts of one state can not go into the merits of a cause of action where a judgment has been duly rendered by the courts of another state on said cause. It is necessary in order to obtain relief in such case, to set aside the judgment already rendered.

#### CONSTITUTIONAL AND STATUTORY REQUIREMENTS.

Article four, section one, of the Federal Constitution requires that full faith and credit shall be given in each state to the judicial proceedings of every other state; and Congress is given the power to prescribe the effect of such judicial proceedings.

Carrying out this latter provision, Congress, in 1790, enacted substantially what is now § 905, R. S. U. S., § 1519 U. S. Comp. Statutes 1916. This statute provides in part that "said records and judicial proceedings, so authenticated shall have such faith and credit given to them in every court within the United States as they have by law or usage in the courts of the state from which they are taken. It was early held that judgments of federal courts, rendered in the various states, come within the purview of this section and also of article four, section one, of the constitution. (See authorities heretofore cited under Points 21, 22 at page 48, 49 of this brief.) Under the recent decisions of this court in the cases of *Supreme Council Royal Arcanum v. Green*, 237 U. S. 531, LRA 1916A, 771, 59 L. ed. 1089, and *Hartford Life Ins. Co. v. Ibs*, 237 U. S. 662, 59 L. ed. 1165, LRA 1916A, 765, the plaintiff in error was entitled to prove that the issue involved in this case had been determined, settled

and adjudicated in the District Court of the United States for the District of Indiana.

The rights of the plaintiff in error were not merely to be permitted to introduce in evidence the said decree together with the proceedings, for such a right would have no legal compulsion; but the plaintiff in error was entitled not only to introduce the said proceedings and decree but to have them applied to the facts in this case and if they showed an adjudication of any of the questions involved in this action, then such question must be eliminated from further consideration in this case, and the decision of the Federal Court given full force and effect.

*Hartford Life Ins. Co. v. Ibs*, 237 U. S. 662, 59 L. ed. 1165, LRA 1916A, 765.

In this case the proceedings were stipulated showing the entire proceedings in the Federal Court, and that amongst the questions involved was the question of the representative form of government of the plaintiff in error and also the validity of the statutes increasing the rates of insurance. The records show conclusively that these questions were both determined in that suit in favor of the plaintiff in error. An appeal from that judgment resulted in its affirmance, and an appeal from such judgment of affirmance was dismissed in this Court.

It must be considered that the words "representative form of government" have the same meaning in Indiana as in Nebraska. An adjudication in Indiana that a corporation has and maintains a representative form of government is conclusive as between the parties all over the United States and having had their day in Court upon this ques-

tion, the membership of this order are concluded by the decree entered. If this were not so the entire question of the validity of the legislation increasing the rates would be open for consideration perpetually, and the society would be harassed by such a multiplicity of suits that their defense would bankrupt the society.

It may be argued that in the *Holt* case the plaintiff did not allege in their bill of complaint that the legislation increasing the rates was not enacted in conformity with all of the various provisions of the several states in respect to fraternal societies. It is an elementary principle of law that where legislation, be it federal, state, municipal or of a private corporation, is challenged in the courts on the ground of its alleged invalidity, the plaintiffs must allege every reason or ground therefor, or the judgment will forever conclude them not only upon the ground specifically alleged but on others as well. Plaintiff can not split a cause of action and try it in piecemeal. This is well shown in the case of *Bell County, etc., School v. Pineville Graded Schools*, 19 Ky. Law Rep. 789, 42 S. W. 92, wherein it was held that, having attacked the validity of the statute, all objections must be alleged or they will be concluded by the judgment.

In the case of *Holt County v. National Life Insurance Co.*, 80 Fed. 686, 25 CCA 469, the plaintiff sought to mandate certain officers to levy a tax for the payment of a judgment. The rate was fixed and the order made. Subsequently suits were brought by taxpayers to restrain the officers from collecting such taxes on the ground that the levy was in excess of the statutory rate. The Court held, however, that such a violation constituted a defense to the original action, and therefore, that the parties were concluded

by the rate fixed. This was a decision by the federal court of the district of Nebraska.

To the same effect is the *Board of Commissioners of Lake County v. Platt*, 79 Fed. 567, 25 CCA 87. An action had been brought against the Board of Commissioners and a judgment by default entered. The board issued bonds to pay such judgment. The plaintiff had purchased some of these bonds. The county refused to pay the coupons. Plaintiff brought an action on the coupons. The county pleaded that the bonds and the debt for which they were given were invalid because in excess of the constitutional limit of indebtedness for the county. It was further alleged that such defense was not made nor adjudicated when the judgment was rendered. The Federal Court, however, held that this question was foreclosed by the judgment rendered as conclusively as though such defense had been especially made. This rule is well illustrated by the case of *Bates v. Bodie*, 245 U. S. 520, 62 L. ed. 444. The plaintiff had procured a judgment for divorce and alimony in the state court of Arkansas. Subsequently, an action was brought in Nebraska for alimony from certain Nebraska lands owned by defendant, the complaint in Nebraska alleging that the Arkansas decree did not take into consideration such Nebraska lands.

An appeal was taken to the Nebraska Supreme Court which held that the plaintiff might proceed against the lands in the State of Nebraska, but this decision was reversed by this Honorable Court, on the ground that the Nebraska Supreme Court had not given full faith and credit to the Arkansas judgment. It was said that "our rule is that an estoppel by judgment is not only as to every matter which was offered and received to sustain or defeat the claim or de

mand but as to any other admissible matter which might have been offered for that purpose."

A suit was brought by a foreign corporation against a tax commissioner to restrain, on certain grounds, the imposition of a license tax. There was a plea that the plaintiff had theretofore sued in the state court, alleging different grounds, to restrain the levy of such tax and that the defendant had obtained a judgment. The Federal Court held that the matter was *res judicata* and that it was wholly immaterial that new grounds were alleged in the federal court.

*Sperry, etc., Co. v. Blue*, 202 Fed. 82, 120 CCA 1.

An action was brought by a bank on paper executed by a wife in Connecticut and delivered by her husband at Chicago. Pending an action in the Federal Court at Chicago, the bank filed its claim against her estate in Connecticut which claim was disallowed on the ground of suretyship. Under the statute of Connecticut this decision was affirmed on appeal. This judgment being subsequently pleaded in the Federal Court, it was held conclusive even though the contract was executed in Illinois and not in Connecticut, and even though the Illinois law permitted a married woman to become surety.

*Mitchell v. First National Bank of Chicago*, 180 U. S. 471, 45 L. ed. 627.

It was well said in the case of *Mazzariello v. Doherty*, 204 Fed. 245, 122 CCA 513, that "it is the imperative demand of the law that a party shall have his day in court and a full and fair trial; but it is not the policy of the law to split remedies or facts, in order that plaintiff may have

interminable trials for a single supposed grievance; and it is because of the demands of justice that litigation shall not be endless that the rule is established in Massachusetts in conformity with that which exists in England, and generally in this country that the parties are concluded by the judgment in the former action not only upon issues actually tried and determined, but upon all issues which might have been tried and determined in that action."

Another case illustrating this rule is *Kenney v. Supreme Lodge of the World, Loyal Order of Moose*, 252 U. S. 411, 64 L. ed. 638, 10 ALR 716.

The plaintiff had sued and recovered a judgment for negligence causing death, in the state of Alabama the death having occurred in the State of Illinois which had a statute forbidding the bringing of such actions outside of that state for death occurring within said state. The plaintiff brought suit on the Alabama judgment in an Illinois court. The Supreme Court of Illinois (235 Ill. 122, 129 N. E. 631, 4 ALR 964), held that the plaintiff had no right of action upon such judgment of Alabama. This Court, however, reversed said judgment holding that the full faith and credit clause of the Federal Constitution was thereby violated.

A judgment was recovered in Missouri upon a cause of action originating in Mississippi which cause was invalid by the statute of said state. The plaintiff, having recovered said judgment in Missouri brought an action thereon in Mississippi. The Mississippi Supreme Court (80 Miss. 737, 92 Am. St. 620), held that the plaintiff could not recover. This decision was reversed by the Supreme Court of the United States.

*Fauntleroy v. Lum*, 210 U. S. 230, 236, 52 L. ed. 1039, 1042.



This Court said:

"The judgment of a state court should have the same credit, validity, and effect in every other court in the United States which it had in the State where it was pronounced, and that whatever pleas would be good to a suit thereon in such state, and no others could be pleaded in any other court in the United States," quoting Marshall C. J. in *Hampton v. McConnell*, 3 Wheat. 224.

#### STATE LICENSE.

It is stipulated in this case that the plaintiff in error was duly licensed to transact business within the State of Nebraska during the entire period of the time covered by this action. The Supreme Constitution and all Supreme Statutes were duly filed with the State Board of Accounts, as required by the statutes of that state. The act authorizing the plaintiff in error to transact business in that state was approved March 29, 1897. (Acts 1897, chapter 47.)

Section 1, thereof, is as follows:

"Section 1. A fraternal beneficiary association is hereby declared to be a corporation, society or voluntary association, formed or organized or carried on for the sole benefit of its members and their beneficiaries, and not for profit. Each such society shall have a lodge system, with ritualistic form of work and representative form of government."

Section 2 of said act is as follows:

"Section 2. Such societies shall make provisions for the payment of benefits in case of deaths, and may make provisions for the payment of benefits in case of sickness, temporary or permanent or physical disability, either as a result of a disease accident, or old age; provided, the period of life in

which payment of physical disability benefits on account of age commences shall not be under 70 years. Provided, the payment of such benefits in all cases shall be subject to compliance, by the member, with the contract, constitutions, rules and laws of the society. Provided, further, that this act shall not be construed to include fraternal orders which only provide for sick and funeral benefits, nor any fraternal beneficiary societies, order or association now organized under the laws of this state, until January 1, 1898; nor shall the contract between the holder of any certificate or the beneficiaries of such certificates and the society, order or association issuing the same, contain in certificate issued by any such society, order or association, organized under the laws of this state prior to January 1, 1898, be in any way affected by this act."

Section 9, thereof, is as follows:

"Section 9. Any such society organized under the laws of any other state, and not now doing business in this state, shall be permitted to do business within this state when it shall file with the auditor of public accounts a duly certified copy of its charts and articles of association, and a copy of its constitution and laws certified to by its secretary or corresponding officer, together with an appointment of the auditor of public accounts of this state as a person upon whom process may be served as hereinafter provided; and Provided, That such society shall be shown by proper certificate to be authorized to do business in the state, territory or province in which it is incorporated or organized. The auditor of public accounts may personally, or by some person to be designated by him, examine into the condition, affairs, character and business methods, accounts and books and investments of such society at its home office, which examination shall be at the expense of such society, and shall be made within 30 days after demand therefor, and the expense of

such examination shall be limited to \$5.00 per day and the necessary expenses of travel and hotel bill. If the auditor, of public accounts, after such examination, is of the opinion that no permit should be granted to such society he may refuse to issue the same."

Section 12, thereof, is as follows:

"Section 12. The auditor of public accounts shall, upon the application of any such association, issue to it a permit in writing, authorizing it to do business within this state for which certificate and all proceedings connected therewith such society shall pay to said auditor of public accounts the fee of twenty dollars."

Section 16, thereof, is as follows:

"Section 16. Any of such association refusing or neglecting to make the report as provided in this act shall be excluded from doing business within this state. The auditor of public accounts must, within sixty days after the failure to make such report, or in case any such society shall exceed its powers, or shall conduct its business fraudulently, or shall fail to comply with any of the provisions of this act, give notice in writing to the attorney general, who shall immediately commence an action against such society to enjoin the same from carrying on any business. No society so enjoined shall have authority to continue in business until such report shall be made, or overt act or violation complained of shall have been corrected, nor until the costs of such action be paid by it; Provided, that the court shall find that such society was in default, as charged, whereupon the auditor of public accounts shall reinstate such association, and not until then shall such association be allowed to again do business in this state. Any officer, agent, or person acting for any such association or subordinate body thereof within this state, while such association shall be so enjoined or

prohibited from doing business pursuant to this act, shall be deemed guilty of a misdemeanor, and, on conviction thereof, shall be punished by a fine of not less than twenty-five dollars, nor more than two hundred dollars, or by imprisonment in the county jail not less than thirty days nor more than one year or both fine and imprisonment, in the discretion of the court."

Section 17, thereof, is as follows:

"Section 17. Any person who shall act within this state as officer, agent or otherwise, for any such association which shall have failed, or neglected or refused to comply with, or which shall have violated any of the provisions of this act, or shall have failed or neglected to procure from the auditor of public accounts, proper certificate of authority to transact business as provided by this act, shall be subject to the penalty provided in the next preceeding section for the misdemeanor therein specified."

Under the provisions above quoted which were all complied with by the plaintiff in error, there is no attempt on the part of the legislature to nullify any certificates issued by the society so licensed. The only action reserved in case of a violation of any of the provisions is the right on behalf of the state to institute proceedings to prevent the society from transacting any further business in the state.

The statute does not attempt to invalidate any of the obligations either of the society or of the member.

As said in the case of *United States v. Arredondo*, 31 U. S. 691, 729, 8 L. ed. 547:

"It is a universal principal, that where power or jurisdiction, delegated to any public officer or tribunal over a subject matter, and its exercise is confided to his or their discretion, the acts so done are

binding and valid as to the subject matter, and individual rights will not be disturbed collaterally."

To the same effect see:

*Noble v. Union, etc., R. Co.*, 147 U. S. 165, 174, 37 L. ed. 127 (Secretary of Interior's decision that railroad company came within purview of the law.) ;

*St. Louis, etc., Co. v. Kemp*, 104 U. S. 636, 26 L. ed. 875 (Officers of land department's decision as to facts essential for patent.) ;

*French v. Fyan*, 93 U. S. 169, 23 L. ed. 812 (Decision of Secretary of the Interior as to swamp lands.) ;

In this case the state of Nebraska delegated to the Auditor of Public Accounts the duty to examine into the organization and the affairs of all fraternal societies wishing to do business in that state, and which were organized outside of said state, and to license the same if he found they had complied with the laws governing such societies. It was further provided that if, after having admitted any such society, they subsequently failed to conform to the laws of said state, it would be his duty to report the same to the Attorney General who must immediately commence an action to oust said society from doing business within the state. This was the remedy prescribed and the sole remedy given by the statute.

We do not deem it necessary to argue that the plaintiff in error cannot furnish insurance to its members and charge the residents of one state more than the residents of another state, giving them the same benefits. It is a funda-

mental principle of the law of fraternal societies that all members shall be treated equally.

*Supreme Lodge Knights of Pythias v. Mims*, 241

U. S. 574, 60 L. ed. 1179.

In respect to the question of the representative form of government the plaintiff in error has the usual and customary form of government for such societies. The local lodges in the various states elect delegates to their various grand lodge within the states. These grand lodges, in turn, elect delegates to the Supreme Lodge. All members of the society may vote in the local lodges for such delegates. All members of the grand lodge may vote for delegates to the Supreme Lodge.

There are now and always have been a few officers who sit in the Supreme Lodge *ex officio*. The Past Supreme Chancellors may sit in the Supreme Lodge and take part in its proceedings. There may be several of these Past Supreme Chancellors of the order living at any particular time. While these were not elected immediately preceding a session of the Supreme Lodge, they were elected to the office of Supreme Chancellor by the entire Supreme Lodge. The election of the Supreme Chancellor clothes him with the right to be a member of the Supreme Lodge during the remainder of his life, so long as he is in good standing in the order. Surely there is no constitutional objection to such a provision and it surely would not constitute a deprivation of a representative form of government for such society to avail itself of the vast experience of those who have held the highest office of the society. Our federal government does not lose its representative form by rea-

son of the fact that the President has been authorized to surround himself with a cabinet who advises with him in reference to the conduct of the affairs of the government, even though he selects them himself. We contend, therefore, as a matter of law that the plaintiff in error has strictly observed and carried out the requirement of the law requiring it to maintain a representative form of government. Before the adoption of the 19th amendment, our government had a representative form even though the great majority of our people did not have the right to vote. Neither the women nor minors were permitted to take part in the elections. This excluded probably 75% of all of the citizens. The fact that some of the members of the order do not avail themselves of the privilege of carrying insurance benefits does not have the effect of rendering the society unrepresentative. The insurance feature of this society is incidental to the main objects. It is one of the benefits of the society which is carried out and continued by the entire society.

The member might be insured today and might drop his insurance tomorrow. At all times he would remain a member of the order, and be entitled to take part in all of its proceedings. The fact that the society extends the insurance privilege to those of its members wishing the same does not thereby disqualify it from continuing such insurance. This question was thoroughly considered in the case of *Westerman v. Supreme Lodge Knights of Pythias*, 196 Mo. 670, 94 S. W. 470, 5 L. R. A. N. S. 1114. In that case it is said:

“At the very threshold of the discussion of the legal propositions involved in this controversy, it is well first to fix definitely the nature and character

of the defendant association. The Supreme Lodge, Knights of Pythias, is the defendant and appellant in this case. It must not be overlooked that the plaintiff is seeking to recover a judgment against this defendant, the Supreme Lodge, Knights of Pythias, and that it is by no means a proceeding against the Endowment Rank [Insurance Department] of that association. The Supreme Lodge, Knights of Pythias, was first organized under a general act of Congress authorizing the formation of such society for benevolent purposes, in the District of Columbia. It was subsequently reincorporated by a special act of Congress. Its charter provides that its property and assets shall not be divided among its members, but shall descend to their successors. It further declares that the association shall not be conducted for gain or profit, and that its purpose shall be fraternal and benevolent. It has no lawful power to engage in the general life insurance business, or to issue ordinary life insurance policies for gain or profit to its members."

"In this case it is expressly admitted by stipulation that the defendant, at the time of the death of Jacob Westerman, in whose favor the certificate here sued on was issued, and long prior thereto, was authorized by the superintendent of insurance of the state of Missouri to do business in this state as a fraternal beneficiary association. It appears from the constitution adopted by the defendant, Supreme Lodge, Knights of Pythias, which was offered in evidence, that the defendant has a lodge system as a secret society, with a ritualistic form of work and a representative form of government, and that it is organized and carried on for the sole benefit of its members and their beneficiaries, and not for profit; that the certificates issued by the defendant through the Endowment Rank [Insurance Department] provide that the benefits shall be payable alone to the families, heirs, blood relatives, or persons dependent upon the members, and that the funds from which the payment of such benefits are made, and the ex-



penses of the association, are derived from assessments and dues collected from the members of such rank who are eligible to obtain benefit certificates. That the defendant in this cause is a fraternal beneficiary association, we are of the opinion there can be no dispute; hence we take it that furnishes the reason for the contention of respondent being directed to the Endowment Rank [Insurance Department], and insisting that such rank should be treated as a separate organization engaged in purely regular or old-line insurance business. However, as suggested by one of the learned counsel for appellant, it must not be overlooked that the certificate sued on was issued by the Supreme Lodge, Knights of Pythias, and not by the Endowment Rank [Insurance Department]. The suit is against the Supreme Lodge, Knights of Pythias, not against any portion of its members designated as belonging to the Endowment Rank [Insurance Department]. The contract is the contract of the association. A careful analysis of the record before us, which discloses the organization of the defendant association, indicates very clearly that the Endowment Rank [Insurance Department] is not a separate organization or society formed among the members of the defendant fraternal association. It is simply a designation of those of the members of the fraternal beneficiary association who have chosen to apply for and receive the benefit of certificates provided for by the association. It does not exist as a separate institution. It is a part and parcel of the Supreme Lodge; whatever business it transacts is done under the supervision of the Supreme Lodge. It is under the control of the Supreme Lodge, and all contracts made by members of the order for certificates are made by the Board of control in the name of and for the Supreme Lodge Knights of Pythias. All the laws, rules and regulations applicable to members of the association of the Endowment Rank [Insurance Department] are enacted by the Supreme Lodge, in which all of the members participate in

convention assembled. The statute does not contemplate that all the members of an association of this character must have benefit certificates of the same kind. It is only essential to constitute the defendant a fraternal beneficiary association that it be organized for the benefit of its members, and not for gain or profit. It must have a representative form of government and ritualistic form of work; having these essential requirements, such association is authorized to issue benefit certificates to any of its members, and it is by no means a condition precedent to make it a fraternal beneficiary association, as contemplated by the statute, that it shall issue such benefit certificates to each and every one of the members of the association. The true test as to whether this is a fraternal beneficiary association is: Has it formed or organized and is it carried on for the sole benefit of its members and their beneficiaries, and not for profit? Has it a lodge system with a ritualistic form of work and a representative form of government? By no means is there any condition embraced in this test that all or any part of the members of such association have received certificates. The mere fact that members of the association, who are entitled upon application to receive certificates from the defendant association, are designated as the Endowment Rank [Insurance Department], falls far short of making them a separate and distinct organization, so formed for the purpose of issuing insurance policies. Those who belong to the endowment class are not members of that class by reason of having joined a distinct society or separate organization, but are designated as belonging to that class by reason of being members of the order of Knights of Pythias. All of the contracts of the defendant association and the benefit certificates issued to members belonging to the endowment class are predicated upon the act of Congress creating it and fixing the scope and purposes of the business in which it may engage. The endowment class, under the charter of the defendant asso-

ciation, is directly under the supervision and control of the Supreme Lodge, Knights of Pythias. Those designated as the endowment class of this association are only authorized to act by virtue of the provisions of the charter of the order of the Knights of Pythias, and every act performed and the issuing of the benefit certificates are only given force and vitality from the organized association of the Knights of Pythias. It is unlike a separate and distinct organization, which has the sole and absolute control of the business of such separate organization, and the only connection that such distinct organization has with some fraternal beneficiary association is to limit the membership of such separate organization to those who are members in good standing in the main fraternal organization. That is not this case. Here we have an Endowment Rank [Insurance Department], which terms are simply used to designate those holding benefit certificates, which designated class are under the control of a board which are elected by the entire membership of the Supreme Lodge. It certainly would not be insisted that if this fraternal organization would undertake to execute and put in force powers authorized by its charter, such as issuing benefit certificates; should select a committee composed of its members to transact such business and do as is done by the Endowment Rank [Insurance Department], report their proceedings to the main organization—that such committee and those holding certificates with whom they had transacted business for the association would be treated as a separate and distinct organization. After a careful consideration of the disclosures of the record now before us, we see no escape from the conclusion that the benefit certificate in suit must be treated as one issued by a fraternal beneficiary association. It was so treated by the insurance department of the state government and it is expressly admitted that this association was authorized by the superintendent of insurance,

at the time of the death of Jacob Westerman and long prior thereto, to do business in this state as such fraternal beneficiary association."

This same subject was referred to in the case of *Tice v. Supreme Lodge Knights of Pythias*, 204 Mo. 349, 100 S. W. 519. The court observed that "the essential fact in this connection is that no one save a member can get insurance, though all need not take it—an arrangement that was indorsed as a lawful one for a beneficiary society to establish in *Laker v. Royal Fraternal Union*, 95 Mo. App. 353, 74 S. W. 705."

We insist, therefore, that the defendant in error ought not to recover in this case for the reason that her rights are limited, and regulated by the performance of her decedent's duty, and of his keeping his certificate in force. He had no right to cease paying his dues and assessments when it became a necessity to increase such dues and assessments. The plaintiff in error not only had the right to make the increase, but it was simply performing its highest duty under the charter, which was a federal statute, to make said increase. The fact that her decedent had been carried for many years at a great loss, gave him no right to require the plaintiff in error to continue carrying him at such loss. It was no hardship upon the members, all of whom had been carried at a loss to be required on and after January 1, 1911, to pay the rates which were absolutely necessary to mature not only their certificates but the certificates of all others as well. The increased rates automatically provide for a waiver of a monthly payment as soon as a surplus accumulates sufficient to do so. It is thus absolutely assured to all members that the rates

fixed can never exceed the actual amounts necessary to mature the certificates, and this the plaintiff in error had the right to do.

*Supreme Lodge Knights of Pythias v. Mims*, 241  
U. S. 574, 60 L. ed. 1179.

The plaintiff in error, therefore, prays that the judgment of the Supreme Court of the State of Nebraska appealed from, be reversed.

T. P. LITTLEPAGE,

W. J. CONNELL,

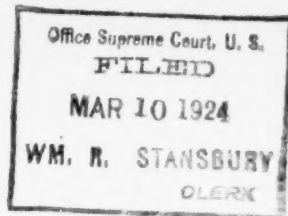
GEORGE A. BANGS,

SOL H. ESAREY,

WARD H. WATSON,

*Attorneys for plaintiff in error.*





Number 214.

---

IN THE  
**SUPREME COURT**  
OF THE  
**UNITED STATES**

October Term, 1923.

---

**SUPREME LODGE KNIGHTS OF PYTHIAS, PLAINTIFF  
IN ERROR,**

**V.**

**GEORGE O. MEYER, DEFENDANT IN ERROR.**

---

**IN ERROR TO THE SUPREME COURT OF THE STATE OF NEBRASKA.**

---

**BRIEF OF DEFENDANT IN ERROR.**

---

**D. W. LIVINGSTON,**

**C. F. REAVIS,**

*Attorneys for Defendant in Error.*





## INDEX.

	Page
Brief and Argument .....	5
Federal Question .....	6
Green and Ibs Case .....	21
Holt Case .....	20
Mims Case .....	21
Points and Authorities .....	2
Representative Form of Government .....	16
Smith Case .....	21
Society must file copies of Constitution and Amendments	10
Statutes Regulating Foreign Corporations.....	14
Statement of Case .....	1
State Interpretation Accepted .....	19

## TABLE OF CASES.

### A

	Page
Acts of Nebraska 1897, Chap. 47.....	3, 4
Allen v. Argiumbau, 198 U. S. 149, 49 L. Ed. 990....	2, 8
Arkansas Southern Railroad Company v. German Na- tional Bank, 207 U. S. 270, 52 L. Ed. 201.....	2, 9

### B

Briggs v. Royal Highlanders, 84 Neb. 834, 122, N. W. 69 .....	4, 17
--	-------

### D

Doyle v. Continental Insurance Company, 94 U. S. 535, 24 L. Ed. 148 .....	4, 14
Ducat v. Chicago, 10 Wall. 410, 19 L. Ed. 972.....	3, 14

### H

Hart v. Knights of Maccabees, 83 Neb. 423, 119 N. W. 679 .....	2, 12, 13
---	-----------

# TABLE OF CASES—(Continued).

## I

	Page
Interstate Amusement Company v. Albert, 239 U. S. 560, 60 L. Ed. 439 .....	4, 15

## J

Johnson v. Bankers Union, 83 Neb. 48, 118 N. W. 1104.	4, 17
---	-------

## K

Knights of Maccabees v. Nitsch, 69 Neb. 372, 95 N. W. 626 .....	3, 11
--	-------

## L

Lafayette Insurance Company v. French, 18 Howard 404, 15 L. Ed. 451.....	3
Leathe v. Thomas, 207 U. S. 93, 52 L. Ed. 118.....	2, 8

## M

Metzger v. Royal Neighbors, 86 Neb. 61, 124 N. W. 913.	3, 12
Murdock v. Mayor and Aldermen of Memphis, 20 Wall. (U. S.) 590, 22 L. Ed. 429.....	2, 6

## P

Paul v. Virginia, 8 Wall. 168, 19 L. Ed. 357.....	3, 14
Prudential Insurance Company of America v. Cheek, 259 U. S. 530, 66 L. Ed. 1044.....	4, 15

## Q

Quong Ham Wah Co. v. Industrial Accident Company, 255 U. S. 445, 65 L. Ed. 723.....	5, 19
--	-------

## S

State v. Insurance Company of North America, 71 Neb. 320, 99 N. W. 36 .....	4, 15
--	-------

# TABLE OF CASES—(Continued).

## T

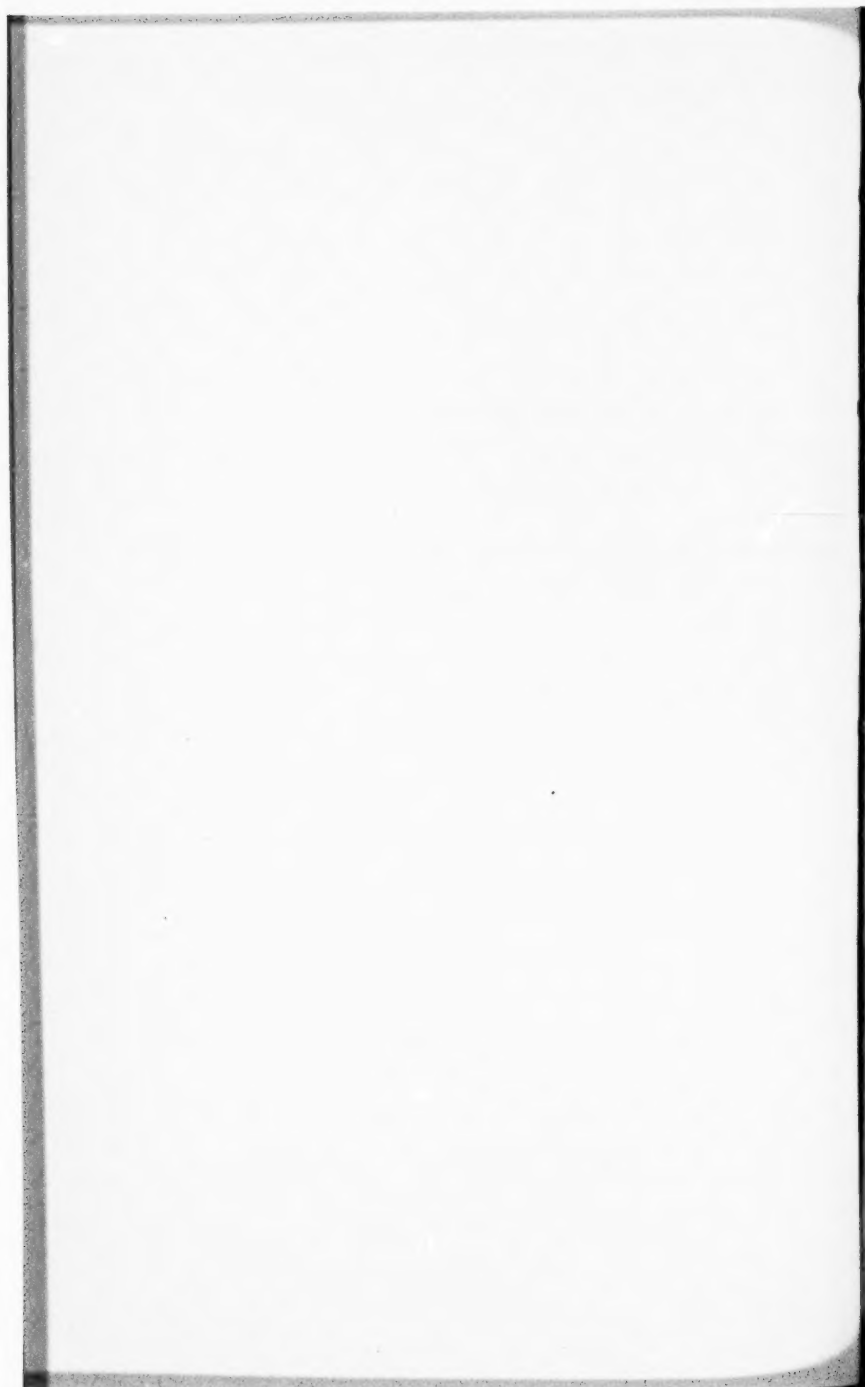
	Page
Thornton v. Duffy, 254 U. S. 361, 65 L. Ed. 304.....	4, 19
Tomson v. Iowa Traveling Men's Assn., 88 Neb. 399, 129 N. W. 529 .....	3, 13

## U

United States Bank of August v. Earle, 13 Peters 519, 10 L. Ed. 274 .....	3
--	---

## W

Ward & Gow v. Krinsky, 259 U. S. 503, 66 L. Ed. 1033. 5, 19	
Waters-Pierce Oil Company v. Texas, 212 U. S. 112, 53 L. Ed. 431 .....	2, 9



Number 214.

---

IN THE

# SUPREME COURT

OF THE

## UNITED STATES

October Term, 1923.

---

SUPREME LODGE KNIGHTS OF PYTHIAS, PLAINTIFF  
IN ERROR,

V.

GEORGE O. MEYER, DEFENDANT IN ERROR.

---

IN ERROR TO THE SUPREME COURT OF THE STATE OF NEBRASKA.

---

### BRIEF OF DEFENDANT IN ERROR.

---

D. W. LIVINGSTON,

C. F. REAVIS,

*Attorneys for Defendant in Error.*

---

### STATEMENT OF CASE.

The statement of the case by the plaintiff in error is quite full and substantially correct, but we wish to add that the matter of the effectiveness of the increase of rates provided for by the amendment to the constitution of the plaintiff in error society January 1, 1911, is an issue under the pleadings (Tr. pp. 18, 19 and 25).

Under the laws of Nebraska, adopted in 1897, under which the plaintiff in error society claims to operate, it was the duty of the society to file with the auditor of public accounts a copy of its constitution and by-laws, duly certified by the secretary or corresponding officer. There is no proof that such copy was ever filed. This law further provided that before any amendment, change or alteration in the constitution or by-laws of such society should be in force a copy thereof, duly certified by its secretary or corresponding officer, shall be filed by the society with the Auditor of Public Accounts. There is no proof that such copy was filed.

Express provision is contained in the amendment affecting the rates here in question exempting members from the operation thereof, and reserving the former section fixing rates to apply to them in any state wherein any legal or equity proceeding there has been a determination that such amendment does not apply (Tr. p. 288).

### POINTS AND AUTHORITIES.

#### Point I.

There is no federal question involved in this case and the Supreme Court is without jurisdiction, and the petition in error must be denied.

*Murdock v. Mayor and Alderman of Memphis*, 20

Wall. (U. S.) 590, 22 L. Ed. 429.

*Allen v. Arguinbau*, 198 U. S. 149, 49 L. Ed. 990.

*Leathe v. Thomas*, 207 U. S. 93, 52 L. Ed. 118.

*Arkansas Southern Railroad Company v. German*

*National Bank*, 207 U. S. 270, 52 L. Ed. 201.

*Waters-Pierce Oil Company v. Texas*, 212 U. S. 112,  
53 L. Ed. 431.

#### Point II.

The Act of Congress creating the plaintiff in error society expressly provided that such corporation should not have

power to amend its constitution so as to conflict with the laws of the United States or of any state.

28 U. S. Statute at Large, pp. 96 and 97.

### Point III.

The laws of Nebraska require that every fraternal society insuring the lives of its members shall file with the auditor of public accounts a copy of its constitution and by-laws, duly certified to by the secretary or corresponding officer, and before any amendment, change or alteration thereof shall take effect or be in force a copy of such amendment, change or alteration, duly certified to by its secretary or corresponding officer shall be filed with the Auditor of Public Accounts of the state.

Section 22, Chapter 47, Acts of Nebraska for year 1897.

Section 7927, Comp. St. Nebraska 1922.

*Knights of Maccabees v. Nitsch*, 69 Neb. 372, 95 N. W. 626.

*Hart v. Knights of Maccabees*, 83 Neb. 423, 119 N. W. 679.

*Metzger v. Royal Neighbors*, 86 Neb. 61, 124 N. W. 913.

*Tomson v. Iowa Traveling Men's Association*, 88 Neb. 399, 129 N. W. 529.

### Point IV.

The state may impose on a foreign corporation, as a condition of coming into and doing business within its territory, any terms, conditions, and restrictions it may think proper, not repugnant to fundamental laws.

*United States Bank of Augusta v. Earle*, 13 Peters 519, 10 L. Ed. 274.

*Lafayette Insurance Company v. French*, 18 Howard 404, 15 L. Ed. 451.

*Paul v. Virginia*, 8 Wallace 168, 19 Ed. 357.

*Ducat v. Chicago*, 10 Wallace 410, 19 L. Ed. 972.

*Doyle v. Continental Insurance Company*, 94 U. S. 535, 24 L. Ed. 148.

*Prudential Insurance Company of America v. Check*, 259 U. S. 530, 66 L. Ed. 1044.

*Interstate Amusement Company v. Albert*, 239 U. S. 560, 60 L. Ed. 439.

*State v. Insurance Company of North America*, 71 Neb. 320, 99 N. W. 36.

#### Point V.

Under the laws of Nebraska a fraternal beneficiary society insuring the lives of its members is required, among other things, to have a representative form of government.

Section 1, Chapter 47, Acts of Nebraska for year 1897.

Section 6635, Cobbeys's Anno. St. Nebraska 1911.

#### Point VI.

Where, under the provisions of the constitution and by-laws of a fraternal beneficiary association, the delegates to the governing body thereof, regularly elected by the members of said association, cannot of themselves, and without the participation of members of committees appointed from members outside of such delegates, legally and of right adopt, alter or amend the edits and laws of such association and absolutely control the government of the same, such governing body is not a representative body, and an association so constituted and governed cannot be said to have a representative form of government.

*Briggs v. Royal Highlands*, 84 Neb. 834, 122 N. W. 69.

*Johnson v. Bankers Union*, 83 Neb. 48, 118 N. W. 1104.

#### Point VII.

The Supreme Court must accept the interpretation of the terms of a state statute placed upon it by the highest court of the state.

*Thornton v. Duffy*, 254 U. S. 361, 65 L. Ed. 304.



*Ward & Gow v. Krinsky*, 259 U. S. 503, 66 L. Ed. 1033.

*Quong Ham Wah Co. v. Industrial Accident Commission*, 255 U. S. 445, 65 L. Ed. 723.

### Point VIII.

The Holt case upon which plaintiff in error relies as *res adjudicata* was commenced January 25, 1911, under former equity rule No. 38, which was as follows: "When the question is one of common or general interest to many persons constituting a class so numerous as to make it impracticable to bring them all before the court, one or more may sue or defend for the whole. But in such cases the decree shall be without prejudice to the rights and claims of the absent parties." The deceased member whose certificate of insurance is sought to be collected was not a party and the decree was without prejudice to his rights, and neither he nor his beneficiary, the defendant in error, is bound by it.

### BRIEF AND ARGUMENT.

The judgment of the Supreme Court of Nebraska should be sustained:

1. For the reason that there is no federal question involved.
2. For the reason that the plaintiff in error society did not file with the Auditor of Public Accounts of Nebraska a certified copy of its constitution and by-laws, therefore, such constitution and by-laws were not in force in Nebraska.
3. For the reason that the plaintiff in error society did not file a certified copy of its amendment to its constitution changing the rates with the auditor of public accounts of the state of Nebraska, and therefore, said amendment and said rates were not in force in the state of Nebraska.

4. For the reason that the plaintiff in error society at the time of adopting the amendment of 1910 to its constitution changing the rates did not have a representative form of government as required by the laws of Nebraska.

Upon any one of these grounds the judgment of the Supreme Court of Nebraska must be sustained and the arguments advanced, and the authorities cited by plaintiff in error do not entitle it to the relief prayed.

#### **Federal Question.**

Unless a federal question is involved this court is without jurisdiction.

In *Murdock v. Mayor and Alderman of Memphis*, 20 Wall. 590, 22 L. Ed. 429, in determining its jurisdiction in cases of this kind this court laid down the following rules:

“(a) That it is essential to the jurisdiction of this court over the judgment or decree of the state court, that it shall appear that one of the questions mentioned in the statute must have been raised and presented to the state court; that it must have been decided by the state court against the right claimed or asserted by plaintiff in error under the constitution, treaties, laws or authority of the United States; or that such a decision was necessary to the judgment or decree rendered in the case.

“(b) These things appearing, this court has jurisdiction and must examine the judgment, so far as to enable it to decide whether this claim of right was correctly adjudicated by the state court.

“(c) If it finds that it was rightly decided, the judgment must be confirmed.

“(d) If it was erroneously decided, then the court must further inquire whether there is any other matter or issue adjudged by the state court; sufficiently broad to maintain the judgment, notwithstanding the error in the decision of the federal question. If this be found to be the case, the judgment must be affirmed, without examination into the soundness of the decision of such other matter or issue.

“(e) But if it be found that the issue raised by the question of federal law must control the whole case, or that there has been no decision by the state court of any other matter which is sufficient of itself to maintain the judgment, then this court will reverse that judgment, and will either render such judgment here as the state court should have rendered, or will remand the case to that court for further proceedings, as the circumstances of the case may require.”

The Act of Congress creating the plaintiff in error society authorized it to have a constitution and to amend it, provided, however, that such constitution and amendments there-to should not in any way conflict with the laws of the United States or of any state. This act is so clear as not to require any elucidation or construction. If its constitution or any amendment thereto conflicted with the law of Nebraska that law controlled, and the constitution in that respect or its amendment was inoperative in the state of Nebraska.

The laws of Nebraska, Section 22, Chapter 47, Acts of 1897, required societies of this character to file a certified copy of its constitution and by-laws, and when amendments thereto were made to file certified copies of such amendments with the auditor of public accounts. There is no proof that such copies were filed as required, and neither the constitution or any amendment thereto in the absence of such filing was in force in Nebraska. Therefore the Supreme Court of Nebraska decided adversely to the contention of plaintiff in error. The burden was on the plaintiff in error to prove the filing of such copies and in the absence of such filing the plaintiff in error was not entitled to the benefit of the provisions of its constitution or any amendment thereto, and there was no proof before the Supreme Court of Nebraska entitling plaintiff in error to the provisions of such constitution and amendments thereto, and the judgment of the Supreme Court of Nebraska rests upon that ground and not upon any federal question.

In *Allen v. Arguimbau*, 198 U. S. 149, 49 L. Ed. 990, this court held:

"The Supreme Court of the United States will not take jurisdiction of a writ of error directed to a state court, where the judgment of that court rests on two grounds, one of which does not involve a federal question, or where it does not appear on which of the two grounds the judgment was based, and the non-federal ground is sufficient in itself to sustain the judgment."

It will be observed that in that case this court lays down the rule that where the judgment of the state court rests on two grounds, one of which is not a federal question or where it does not appear on which of the two grounds the judgment was based, the non-federal ground is sufficient in itself to sustain the judgment, and the writ of error will be denied. Obviously, the failure on the part of the plaintiff in error society to file certified copies of its constitution and the amendments thereto is clearly sufficient to sustain the judgment of the Supreme Court of Nebraska.

In *Leathe v. Thomas*, 207 U. S. 93, 52 L. Ed. 118, this court held:

"It is admitted that the general and well settled rule is that in a case coming from a state court this court can consider only federal questions, and that it cannot entertain the case unless the decision was against the plaintiff in error upon those questions. *Murdock v. Memphis*, 20 Wall. 590, 22 L. Ed. 429; *Sauer v. New York*, 206 U. S. 536, 546, 51 L. Ed. 1176, 1181, 27 Sup. Ct. Rep. 686. It is admitted further, that a decision upon those questions must have been necessary to the decision of the case, so that, if the judgment complained of is supported also upon other and independent grounds, the judgment must be affirmed or the writ of error dismissed, as the case may be. *Murdock v. Memphis*, *supra*. But *Murdock v. Memphis* does not stop there. It further establishes that when the record discloses such other and completely adequate grounds this court commonly does not inquire whether the decision upon them was or

was not correct, or reach a federal question by determining that they ought not to have been held to warrant the result. 20 Wall. 590, 635, 22 L. Ed. 429, 444; *Eustis v. Bolles*, 150 U. S. 361, 369, 37 L. Ed. 1111, 1113, 14 Sup. Ct. Rep. 131; *Castillo v. McConnico*, 168 U. S. 674, 679, 42 L. Ed. 622, 624, 18 Sup. Ct. Rep. 229."

Under this holding the contention of the plaintiff in error is settled against it.

In *Arkansas Southern Railroad Company v. German National Bank*, 207 U. S. 270, 52 L. Ed. 201, this court again held:

"But, according to the well-settled doctrine of this court with regard to cases coming from state courts, unless a decision upon a federal question was necessary to the judgment, or in fact was made the ground of it, the writ of error must be dismissed. And even when an erroneous decision upon a federal question is made a ground, if the judgment also is supported upon another which is adequate by itself, and which contains no federal question, the same result must follow, as a general rule. Moreover, ordinarily this court will not inquire whether the decision upon the matter not subject to its revision was right or wrong. *Murdock v. Memphis*, 20 Wall. 590, 22 L. Ed. 429; *Hale v. Akers*, 132 U. S. 554, 33 L. Ed. 442, 10 Sup. Ct. Rep. 171; *Leathe v. Thomas*, Nov. 11, 1907, 207 U. S. 93, ante, 118, 28 Sup. Ct. Rep. 30. Therefore, if we should be of opinion, as we are, that the supreme court rests its judgment upon principles of common law as it understood them, we should go no farther, although that court also upheld and relied upon the statute, whether, in our opinion, its views were right or wrong."

To the same effect is the holding of this court in *Waters-Pierce Oil Company v. Texas*, 212 U. S. 112, 53 L. Ed. 431.

The contention that the construction of the Act of Congress creating the plaintiff in error society was involved in its decision by the Nebraska Supreme Court, and that the same was adversely there decided is without foundation. The

act itself provides that any provisions of its constitution or any amendments thereto must not conflict with the laws of any state in which the society seeks to do business. This requires no elucidation or construction.

**SOCIETY MUST FILE CERTIFIED COPIES OF CONSTITUTION AND AMENDMENTS.**

The plaintiff in error society as to the state of Nebraska is a foreign corporation. The membership of the defendant in error's decedent in the insurance department of the plaintiff in error began in 1885, while the said decedent was a resident of Nebraska and a member of a subordinate lodge of the plaintiff in error, shows that the plaintiff in error was doing business in the state of Nebraska at that time (Tr. p. 32); and apparently continued to do business in said state until the commencement of this action and later. Section 8, Laws of Nebraska, Chapter 47, for the years 1897, provided, "all such societies organized under the laws of this state or of any other state, territory or province and now doing business in this state, may continue such business provided they hereafter comply with the provisions of this act." Sections 10 and 11 of the same act require such associations to file reports and appoint the auditor of public accounts of the state of Nebraska to be its attorney in fact, upon whom process in any action against it might be served. Section 22 of the same act required, "every such society shall file with the auditor of public accounts a copy of its constitution and by-laws, duly certified to by the secretary or corresponding officer and before any amendment, change or alteration thereto shall take effect or be in force a copy of such amendment, change or alteration, duly certified to by its secretary or corresponding officer, shall be filed with the auditor of public accounts."

The burden rested upon the plaintiff in error to prove not only that it was licensed to do business in Nebraska, but that it had complied with requirements of the laws of Ne-

braska. There is no evidence, either by proof or stipulation, that copies of the constitution or the amendment raising the rates were ever filed as required by the laws of Nebraska. Upon page 71 of plaintiff in error's brief it is stated that these documents were filed, but this statement is erroneous and is absolutely without foundation in fact.

In the case of *Knights of Maccabees v. Nitsch*, 69 Neb. 372, 95 N. W. 626, construing and applying Section 22, Chapter 47, Laws of Nebraska 1897, requiring the filing of copies and there referred to as Section 112, Chapter 43, Comp. St. 1901, the Supreme Court of Nebraska held:

"The provision in said section that, before any amendment to or alteration in the constitution or by-laws of such an association shall take effect or be in force, a copy of the amendment or alteration, duly certified, must be filed with the auditor of public accounts, is not unconstitutional, as impairing the obligation of contracts, when applied to a benefit certificate issued prior to the statute, and expressly subject to all future changes in or amendments to the by-laws of the association."

That court also there held that this section applied to associations formed and organized in other states. In that case it was further held:

"When, after the enactment of said section, the association desired to amend its by-laws, it had only to record the amendment in the manner prescribed by the statute. It is well settled that statutes requiring instruments to be filed or recorded, and making them invalid, or postponing them to instruments subsequently executed, in case they are not so filed or recorded, are not unconstitutional, as impairing the obligation of contracts, with respect to pre-existing instruments. *Jackson v. Lamphire*, 3 Pet. 280, 7 L. Ed. 679; *Vance v. Vance*, 108 U. S. 514, 2 Sup. Ct. 854, 27 L. Ed. 808; *Weil v. State*, 46 Ohio St. 450, 21 N. E. 643; *Bird v. Keller*, 77 Me. 270; *Stafford v. Lick*, 7 Cal. 479; *Varick v. Briggs*, 6 Paige, 323."

In the case of *Hart v. Knights of Maccabees*, 83 Neb. 423, 119 N. W. 679, the Supreme Court of Nebraska held:

"A fraternal insurance company cannot have the benefit of its by-laws and amendments thereto, defending against a death claim, unless certified copy of such by-laws and amendments have been filed with the Auditor of Public Accounts."

That court in passing upon that case said:

"There is no evidence coming from the grand record keeper, or from the office of Auditor of State, or from any other source, that these laws were ever filed in the office of the Auditor of State, or that the defendant order had taken any steps which would make their laws competent evidence in this state in defense of a suit brought on a certificate of membership."

That court further held:

"It is familiar law that no presumption will be indulged in favor of a forfeiture, and the burden of proof, where the society seeks to escape liability on that ground, is upon the society. An allegation in the petition that all the conditions of the contract were fulfilled by the assured even when denied by the answer, does not impose on the plaintiff the burden of proving that each condition was fulfilled; but, when the breach of any particular condition is relied on as a defense the burden of proving it is upon the society. 29 Cyc. 232."

That court there further observed and held:

"As we have seen none of these laws or regulations were in force in this state because no copy of such laws were on file with the auditor of state in 1902, when the deceased became a member and the revised laws of 1904 which were filed with the auditor were not properly certified. This was fatal to the defense offered."

In the case of *Metzger v. Royal Neighbors of America*, 86 Neb. 61, 124 N. W. 913, the Supreme Court of Nebraska followed the rule laid down and above quoted in the case of *Hart v. Knights of Maccabees*. In the Metzger case it



was stipulated that the by-laws had been amended and that copies should be admitted in evidence without objection, except materiality or relevancy. The court there held:

"The 1901 by-laws and the by-laws as amended in 1903 and 1905 were introduced in evidence, but there is no proof that they were filed in the office of the Auditor of Public Accounts, and hence they are immaterial for the purposes of this case."

In *Hart v. Knights of Maccabees of the World*, 83 Neb. 423, 119 N. W. 679, it was suggested at the bar that the aforesaid stipulation waive proof of the filing of the amended by-laws, but the argument is not sound. By stipulating plaintiffs' counsel only relieved the defendant of proving the adoption of the by-laws and amendments thereto.

In this case the stipulation between the parties went no farther than to stipulate that the plaintiff in error society had adopted certain by-laws and amendments thereto.

In *Tomson v. Iowa Traveling Men's Association*, 88 Neb. 399, 129 N. W. 529, the Supreme Court of Nebraska again confirmed its rule in construing said Section 22 laid down in the case of *Hart v. Knights of Maccabees* and went farther and held:

"That rule applies to all fraternal insurance companies doing business in this state, whether domestic or foreign, and whether licensed to do business in the state or not."

From these holdings of the Supreme Court of Nebraska it is clear and cannot be successfully disputed that when the plaintiff in error society failed to file copies of its constitution and by-laws, or its amendments, or to make proof that this law had been complied with, it precluded itself from the benefit of any of the provisions of its constitution or amendments thereto as constituting any defense to the action of defendant in error to enforce his rights under the certificate of insurance issued to his decedent.

### Statutes Regulating Foreign Corporations.

The rule that a state may impose on a foreign corporation, as a condition of coming into and doing business within its territory, any terms, conditions, and restrictions it may think proper, not repugnant to fundamental laws is so firmly established that it may be regarded as elementary. In *Paul v. Virginia*, 8 Wallace 168, 19 L. Ed. 357, this court held:

"States may exclude a foreign corporation entirely or they may exact such security for the performance of its contracts with their citizens as, in their judgment, will best promote the public interest."

And held further:

"A law of a state requiring insurance companies of other states to file security before they can issue policies in the state is constitutional."

In *Ducat v. The City of Chicago*, 10 Wallace 410, 19 L. Ed. 972, this court held "a state has power to discriminate between its own domestic corporations and those of other states, desirous of transacting business within its jurisdiction." It will be observed that this court there held that a state may by its legislation even discriminate against a foreign corporation.

In *Doyle v. Continental Insurance Company*, 94 U. S. 535, 24 L. Ed. 148, this court held:

"A state has the right to impose conditions on the transaction of business within its territory by an insurance company chartered by another state, which are not in conflict with the Constitution or laws of the United States."

And it further held:

"It has the right entirely to exclude such corporations from its territory, or having given a license, to revoke it, in its discretion, for good cause or without cause."

In *Prudential Insurance Company v. Cheek*, 259 U. S. 530, 66 L. Ed. 1044, this court held:

"A foreign corporation, though not waiving any constitutional objections by coming into the state to do business therein has no valid objection to such reasonable regulations as may be prescribed for domestic corporations similarly circumstanced."

In *Interstate Amusement Company v. Albert*, 239 U. S. 560, 60 L. Ed. 439, this court held:

"A foreign corporation doing local business within the state may, consistently with the commerce and due process of law clauses of the Federal Constitution, be required to file a copy of its charter with the Secretary of State, conformable to Tennessee Laws 1895, Chapter 81, as a condition precedent to its right to sue in the state courts upon a contract made in its conduct of such business."

In that case this court held:

"That without conforming to such statute such foreign corporation could not sue in the state courts."

The Supreme Court of Nebraska has held consistently with this rule, that unless such copies are filed the benefit of any defense contained in such constitution or amendments is denied them.

In *State v. Insurance Company of North America*, 71 Neb. 320, 99 N. W. 36, the Supreme Court of Nebraska held:

"The principle that a state may impose on a foreign corporation, as a condition of coming into or doing business within its territory, any terms, conditions, and restrictions it may think proper that are not repugnant to the Constitution or laws of the United States, is firmly established by the decisions of the Supreme Court of the United States. *Bank of Augusta v. Earle*, 13 Pet. 519, 10 L. Ed. 274; *Lafayette Insurance Co. v. French*, 18 How. 404, 15 L. Ed. 451; *Paul v. Virginia*, 8 Wall. 168, 19 L. Ed. 357; *Ducat v. Chicago*, 10 Wall. 410,

19 L. Ed. 972; *Doyle v. Continental Insurance Co.*, 94 U. S. 535, 24 L. Ed. 148."

The holding of the Supreme Court of Nebraska on this rule of law is consistent with the holdings of this court.

### **Representative Form of Government.**

Under the laws of Nebraska a fraternal beneficiary society, insuring the lives of its members is required, among other things, to have a representative form of government. Section 1, Chapter 27, Acts of Nebraska 1897, makes this provision. It is as follows:

"A fraternal beneficiary society is hereby declared to be a corporation, society or voluntary association formed or organized and carried on for the sole benefit of its members and their beneficiaries, and not for profit, and as such society shall have a lodge system, with ritualistic form of work and representative form of government."

The plaintiff in error society pretends to have a representative form of government. Certified copies of its constitution and amendments thereto not having been filed as required by law, the plaintiff in error society was not entitled to the provisions thereof as establishing on its part a representative form of government. There was no proof before the Supreme Court of Nebraska, of which the court was obliged to take cognizance, that it did have such form of government, and under the proof the Supreme Court of Nebraska could make no other finding or judgment than an adverse one to the society.

Granting for the purpose of argument, and argument only, that the plaintiff in error society has a form of government approaching a representative form it does not have, and did not have at the time it undertook to adopt the amendment to its constitution in 1910 raising the rates a representative form of government as required by the statutes and laws of Nebraska, where it sought to do business and did do business with defendant in error's decedent and others.

In construing and applying Section 1, Chapter 47, Acts of Nebraska for 1897, the Supreme Court of Nebraska, in *Briggs v. Royal Highlanders*, 84 Neb. 834, 122 N. W. 69, held:

"A by-law providing for a forfeiture, adopted by a fraternal beneficiary association subsequent to the issuance by it of a benefit certificate, will be strictly construed against the association, and, if passed in contravention of the provisions of the statute governing such association, it will be *held* void and of no effect. *Lange v. Royal Highlanders*, 75 Neb. 188, 106 N. W. 224, 110 N. W. 1110, 10 L. R. A. (N. S.) 666, 121 Am. St. Rep. 786.

"Where a fraternal benefit association has not complied with the provisions of Section 1, p. 266, c. 47, of the Acts of 1897, and adopted a representative form of government, its governing body is without power to adopt an edict or by-law changing the terms and obligations of a mutual benefit certificate theretofore issued to one of its members. *Lange v. Royal Highlanders*, 75 Neb. 196, 106 N. W. 224, 110 N. W. 1110, 10 L. R. A. (N. S.) 666, 121 Am. St. Rep. 786.

"Where, under the provisions of the constitution and by-laws of a fraternal beneficiary association, the delegates to the governing body thereof, regularly elected by the members of said association, cannot of themselves, and without the participation of members of committees appointed from members outside of such delegates, legally and of right adopt, alter, or amend the edicts and laws of such association and absolutely control the government of the same, such governing body is not a representative body, and an association so constituted and governed cannot be said to have a representative form of government."

Again in *Johnson v. Bankers' Union of the World*, 83 Neb. 48, 118 N. W. 1104, the Supreme Court of Nebraska held:

"Where a fraternal benefit association has not complied with the provisions of section 1 c. 47, p. 266, Acts 1897, and adopted a representative form of government, its governing body is without power to adopt a consti-

tution or by-law, or to amend the same, changing the terms and obligations of a mutual benefit certificate theretofore issued to one of its members."

It is stipulated by the plaintiff in error society (Tr. p. 35) that the Supreme Lodge of 1910, when the amendment seeking to raise the rates was adopted, was composed of 163 members nine of whom were "Past Supreme Chancellors" and eight were "Supreme Officers," 98 were holders of certificates in the insurance department, 146 were elected by the various grand lodges; that all of these members including the nine "Past Supreme Chancellors" and eight "Supreme Officers" of the plaintiff in error society participated in the adoption of said amendment.

It is urged by the plaintiff in error in its brief that the courts of other states and the United States Court for the District of Indiana in the Holt case found and decided that the plaintiff in error society possessed a representative form of government. The statutes in question are widely at variance with the Nebraska statute. The Indiana statute governing the Holt case in that respect Section 5043, Burns' Statutes Indiana, Rev. 1914, defines a fraternal beneficiary association as follows:

"Any association shall be deemed to have a representative form of government when it shall provide in its constitution and laws for a supreme legislative or governing body, composed of representatives elected either by the members or by delegates elected by the members through a delegates convention system, together with such other members as may be prescribed by its constitution and laws: Provided, that the elective representatives shall constitute a majority in number and have not less than a majority of the votes."

This statute is widely different from the Nebraska statute. What appears to be the form of government of the plaintiff in error society appears to conform with the Indiana statute, but it will not be contended that a federal court sitting in

Indiana or a court of a foreign state could place a construction on a statute of Nebraska regulating the operation of a foreign corporation within its borders that would amount to an estoppel.

### **State Interpretation Accepted.**

The Supreme Court accepts the interpretation of the terms of a state statute placed upon it by the highest court of the state. This rule applies in this case, both to the Nebraska statute prescribing a representative form of government in fraternal societies, and requiring that such societies must file certified copies of their constitution and by-laws and also the amendments thereto and the interpretation and construction placed upon such statutes by the Supreme Court of Nebraska, denying such societies the benefit of any provisions in the constitution or by-laws or amendments thereto in making defense against a death claim where such societies have failed to comply with the law by filing such documents.

In *Thornton v. Duff*, 254 U. S. 361, 65 L. Ed. 304, this court held:

"The Federal Supreme Court must accept on writ of error the decision of a highest court of a state as to the meaning of state legislation and the state constitution, as though such meaning was expressed in both legislation and constitution."

In *Ward & Gow v. Krinsky*, 259 U. S. 503, 66 L. Ed. 1033, this court held:

"In the exercise of the appellate jurisdiction of the Federal Supreme Court over state courts, the former court is bound by the construction of a state law adopted by its court of last resort."

In *Quong Ham Wah Co. v. Industrial Accident Commission*, 255 U. S. 445, 65 L. Ed. 723, this court held:

"The construction of a state statute by the highest court of that state must be accepted by the Federal Supreme Court when testing the validity of the statute

under the Federal Constitution, on writ of error to the state court."

### Holt Case.

This case was commenced in the District Court of United States for the District Court of Indiana by Joseph Holt and others "on behalf of themselves and all persons similarly situate" against the plaintiff in error society January 25, 1911. The action was brought under equity rule 38 as it then existed. The rule provided that as to persons not made parties the decree should be without prejudice to their rights. The defendant in error's decedent was not a party and his rights were in no way affected nor concluded.

It is contended by plaintiff in error that the question of the character of its organization as to having a representative form of government was there decided. So far as the court's decision in that case upon that question was concerned it could and did only decide that its form of government complied with the statute of Indiana, which, as already observed, is widely different in its terms than the Nebraska statute. The Nebraska statute defining representative form of government was not and could not be there adjudicated, and the Nebraska statute requiring such societies to file copies of its constitution and by-laws and amendments thereto was not and could not be there adjudicated. Therefore, the defendant in error and his decedent were not estopped from making the defenses; first, that the plaintiff in error society had failed to file copies of its constitution and amendments as required by the Nebraska statute. Second, that the plaintiff in error society did not possess a representative form of government as required by the statutes of Nebraska, and therefore was without authority to adopt the amendment of 1910 raising rates.

The Supreme Court of Nebraska to hold that the defendant in error and his decedent was barred and estopped under



the decision in the *Holt* case is no violation of the full faith and credit clause of the federal constitution.

### **Mims Case.**

The Mims case upon which plaintiff in error places great reliance came to this court upon a writ of error from the highest appellate court of the state of Texas. The state court of Texas held that the enactment of the rate amendment of 1910 was by reason of its excessive increase void. The question of representative form of government or of the compliance with state regulations regarding filing of copies of constitution and by-laws was not involved, so that that case is not decisive of any issue in this case.

### **Smith Case.**

The Smith case came to this court by appeal from the Circuit Court of Appeals of one of the districts of New York and the questions there presented are almost identically the same as were presented in the Mims case, and this court in deciding this case said that it was ruled by the decision in the Mims case.

### **Green and Ibs Cases.**

The plaintiff in error relies upon the case of *Royal Arcanum v. Green*, 237 U. S. 531, 59 L. Ed. 1089, as one of its authorities supporting its contention that the Supreme Court of Nebraska violated the full, faith and credit clause in not holding that the decision in the *Holt* case was an estoppel. In this, the Green case, the home state of the society in construing its charter held it had authority to amend its by-laws so as to increase its assessment rates and that the courts of the state of New York were bound to give credit to such decision. That is all that is decided in this case.

For the same purpose the plaintiff in error relies upon the decision of this court in *Hartford Life Insurance Co. v.*

*Eliza Ibs*, 237 U. S. 662, 59 L. Ed. 1165. In that case also there was a decree by the court of the home state adjudging that the corporation was authorized to make advances from its mortuary funds and to replenish the same by subsequent assessments upon its members, and that failure on the part of the court in the state of Minnesota to recognize this decree was a violation of the full, faith and credit clause of the federal constitution. That is all that is decided in that case.

We submit to the court that no federal question is here involved, that the judgment of the Supreme Court of Nebraska is just and correct and should be sustained; and that the writ of error should be denied or the judgment of the Supreme Court of Nebraska affirmed.

Respectfully submitted,

D. W. LIVINGSTON,

C. F. REAVIS,

*Attorneys for Defendant in Error.*



IN THE

# Supreme Court of the United States

OCTOBER TERM, 1923.

SUPREME LODGE KNIGHTS OF PYTHIAS,  
*Plaintiff in Error,*

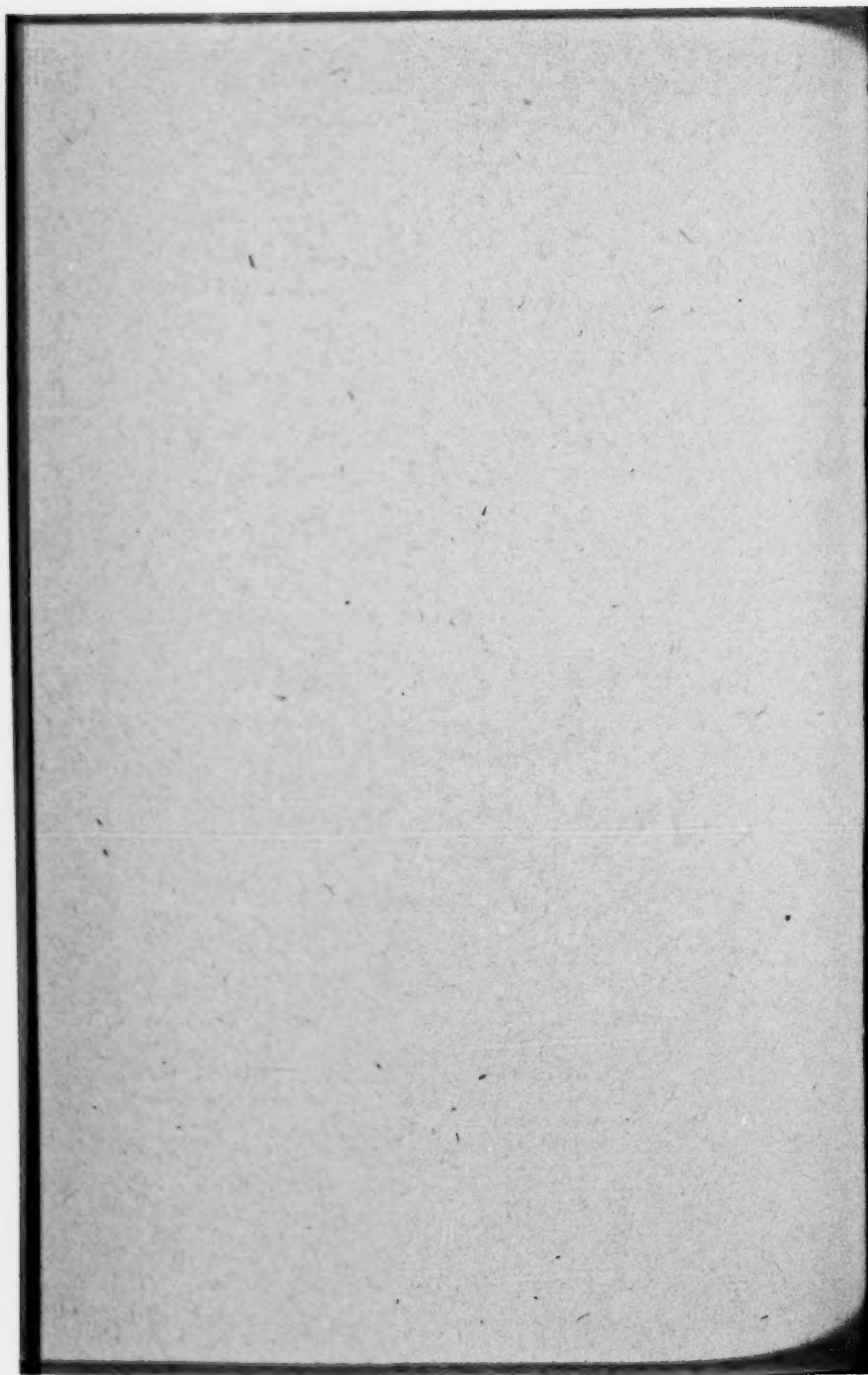
v.

GEORGE O MEYER,  
*Defendant in Error.*

IN ERROR TO THE SUPREME COURT OF THE STATE OF  
NEBRASKA.

REPLY BRIEF.

T. P. LITTLEPAGE,  
W. J. CONNELL,  
GEORGE A. BANGS,  
SOL H. ESAREY,  
WARD H. WATSON,  
*Attorneys for Plaintiff in Error.*



## INDEX.

	Page
Federal Question -----	2
Compliance with State Law -----	4
Representative Form of Government -----	6
Federal Court Rules -----	8
Constitution Supreme -----	13
Splitting Causes of Action -----	14
Violation of Nebraska Statute -----	17

# TABLE OF CASES.

	Page
Equity Rule 38 -----	8
Equity Rule 48, 210 U. S. 508, 524 -----	8
Fauntleroy v. Lum, 210 U. S. 230, 80 Miss. 737 -----	19
Hampton v. McConnel, 3 Wheat. 234, 4 L. ed. 378 -----	11
Hartford Life Ins. Co. v. Barber, 245 U. S. 146 -----	17
Hartford Life Ins. Co. v. Ibs, 237 U. S. 662 -----	11, 12, 17
Holt v. Supreme Lodge Knights of Pythias, 235 Fed. 885, 149 C. C. A. 197 -----	8
Kenney v. Supreme Lodge, Loyal Order of Moose, 252 U. S. 411 -----	20
Mayor, etc., City of Davenport v. United States, ex rel., Lord, 76 U. S. 409, 19 L. ed. 704 -----	15
Mills v. Durgee, 7 Cranch 481, 3 L. ed. 411 -----	11
Nauyalis v. Philadelphia, etc., Iron Co., 270 Fed. 93 ---	16
Payne v. New York, etc., R. Co., 201 N. Y. 436 -----	16
People v. Detroit, etc., R. Co., 157 Mich. 144, 121 N. W. 814 -----	15
Supreme Council Royal Arcanum v. Greene, 237 U. S. 531 -----	17
Supreme Lodge Knights of Pythias v. Mims, 241 U. S. 574 -----	2, 7, 17
Supreme Lodge Knights of Pythias v. Smyth, 245 U. S. 594 -----	2, 17
Supreme Tribe of Ben Hur v. Cauble, 255 U. S. 356 ----	9
United States v. California & Oregon Land Co., 192 U. S. 355, 48 L. ed. 476 -----	16
United States, ex rel. v. City of New Orleans, 98 U. S. 381 -----	15

IN THE

# Supreme Court of the United States

---

OCTOBER TERM, 1923.

---

SUPREME LODGE KNIGHTS OF PYTHIAS,  
*Plaintiff in Error,*

v.

GEORGE O. MEYER,  
*Defendant in Error.*

} No. 214.

---

IN ERROR TO THE SUPREME COURT OF THE STATE OF  
NEBRASKA.

---

## REPLY BRIEF.

---

The defendant in error bases its argument for affirm-  
ance upon the four following propositions:

- (a) No federal question.
- (b and c) Failure to file supreme statute increasing rates.
- (d) Invalidity of statute increasing rates on the ground that plaintiff in error did not have representative form of government.



## FEDERAL QUESTION.

Two distinct and separate federal questions are directly involved in this action. Treating them inversely, the validity of the Supreme Statute increasing the rates necessarily challenges the power of the plaintiff in error under the federal statute creating it to increase its rates of insurance. If such federal statute did not clothe the plaintiff in error with the power to enact the statute increasing its rates, then, of necessity, the increase is invalid and cannot be enforced anywhere. A by-law or regulation which is *ultra vires* is not enforceable anywhere against anybody. We do not deem it necessary to argue this question for it has been definitely determined in two cases by this Honorable Court.

*Supreme Lodge Knights of Pythias v. Mims*, 241  
U. S. 574;

*Supreme Lodge Knights of Pythias v. Smyth*, 245  
U. S. 594.

The reasoning of these two cases seems conclusive. The plaintiff in error was chartered to perform a certain duty. By reason of the old rate tentatively fixed by the plaintiff in error it could not perform that duty. It enacted the statute in question increasing the rates so that it could perform its duty. That is the statute, the validity of which is again attacked by the defendant in error. It will be noted that the Honorable Supreme Court of the State of Nebraska declared this statute invalid. It did not refuse to enforce this rate for any other reason. It struck at the very heart of this institution by declaring that its legislation was invalid.

The Supreme Lodge Knights of Pythias was governed throughout its whole history, and is still governed by its Supreme Lodge elected and constituted in the same manner. The federal statute creating the plaintiff in error specifically incorporated the Supreme Lodge "officers and members of the Supreme Lodge Knights of Pythias, and their successors," as the corporation. It gives to the corporation the power to amend its constitution and statutes at pleasure. If the Supreme Lodge of this order was constituted as the stipulation says, then the validity of said statute cannot be questioned. The stipulation (Tr., p. 35) "that the Supreme Lodge of the defendant during the period covered by the pleadings in this case was constituted in accordance with the Supreme Constitution as it existed in 1910 and that all the legislation and statutes were enacted in substantially the same manner."

The federal statute having fixed the character and composition of said Supreme Lodge, said Supreme Lodge is powerless to change it in violation of said federal statute. If said corporation exercised its duty in accordance with said federal statute, which it is admitted it has done, then the specific statute in question, enacted by the same body elected and constituted exactly as its predecessors, cannot be held to be in violation of said federal statute. The creature cannot rise superior to its creator. The Supreme Lodge cannot reconstitute itself in violation of its federal charter and make its governing body something out of accord with the statute creating it.

Said Supreme Statute is either valid or it is invalid as measured by the Federal Statute creating it. Plaintiff in error must perform its duty in accordance with the statute

creating it. It cannot operate in violation of the statute creating it. When it has acted in accordance with said federal statute, then the courts of its domicile, which are the federal courts, will uphold its action. We shall speak of its admission to do business in the state of Nebraska in a subsequent part of this brief. It is also true that its statutes cannot be valid for a part of its membership and invalid as to the remainder. A fraternal order *ex necessitate* cannot impose one set of rates upon some of its members and an entirely different set upon other members in the same situation. A fraternal beneficiary society cannot tender to its Texas member one rate, to its New York members a different rate, and to its Nebraska members a still different rate. Equality of opportunity, of privileges, and of benefits, under the same circumstances, must be accorded by a fraternal society to all of its membership. Its statutes, therefore, are either valid or invalid as to all. Special privileges are obnoxious to the law of fraternal societies.

#### COMPLIANCE WITH STATE LAW.

The second and third questions raised by defendant in error relate to the filing with the Auditor of Public Accounts of the State of Nebraska of the statute increasing the rates, and will be considered together. The statute of 1897, of Nebraska, authorized foreign fraternal societies to continue doing business in that state upon the filing with the auditor of public accounts a "duly certified copy of its charter and articles of association, and a copy of its constitution and laws certified to by its secretary or corresponding officer, together with an appointment of the Auditor of Public Accounts of this state as a person upon whom process may be served as hereinafter provided." (Plaintiff in Error's Brief, p. 72, § 9.)

It is further provided by said section of said statute that the Auditor of Public Accounts may personally examine into the condition, affairs, character and business matters, accounts and books, and investments of such society at its home office, which examination shall be at the expense of such society.

It is further provided that if said auditor "after such examination is of the opinion that no permit should be granted to such society he may refuse to issue the same."

It is stipulated in the record (Tr., p. 32) that the plaintiff in error was authorized to transact business in said state during the entire period covered by the pleadings.

Section 12 of said Act of 1897 (Plaintiff in Error's Brief, p. 73), provides that "the auditor of public accounts shall, \* \* \* issue to it a permit in writing authorizing it to do business in this state for which certificate and all proceedings connected therewith, such society shall pay to said Auditor of Public Accounts the fee of \$20.

The stipulation is that this was all done, which in fact it was. There is no contention whatsoever between the State of Nebraska and the plaintiff in error. There never was.

Said State of Nebraska is not a party to this litigation and never was. It was not a party to the litigation known as the Holt case. That case was brought by the membership of the Fourth Class amongst whom was plaintiff's decedent. This case was brought by the beneficiary of said decedent on his certificate.

The Supreme Statute increasing the rate being valid as to the entire membership, and the state law of Nebraska having been complied with completely, not only as to the

filing of a copy of the charter and of the supreme constitution and statutes, including the one raising the rates, but the insurance fees having been paid and the certificate granted by the state official designated by said statute of 1897 as the person who should on behalf of said state examine into and determine whether the plaintiff in error should be admitted under said state to transact business in said state, duly issued a license therefor to the plaintiff in error.

#### REPRESENTATIVE FORM OF GOVERNMENT.

We now pass to the fourth question and last raised by the defendant in error, which is that the plaintiff in error did not have when the statute increasing the rates was enacted, "a representative form of government."

The federal statute creating the plaintiff in error did not in terms require it to have and maintain a representative form of government. It did enact that certain officers, naming them, and their successors, officers and members, of the Supreme Lodge Knights of Pythias should constitute the corporation. As the supreme lodge of said order was then constituted as it was in 1910, and is yet, then it must be inferred that a representative form of government was, at least not antagonistic or obnoxious to said federal statute. If it be said that said statute does not command a representative form, nevertheless it sanctions it.

At this point we desire to state that the Honorable Supreme Court of Nebraska in its first decision in this case in the opinion upon petition for rehearing spoke of the decision in the Holt Case (235 Fed. 885, 149 CCA 197), as being governed by a special statute of the State of Indiana.

Said court also in said opinion on petition for rehearing

spoke of the Mims case (241 U. S. 574) as being governed by the statutes of the State of Texas, whereas, as a matter of fact, neither of said statutes, had the remotest thing to do with the decisions of said cases. In the Holt case the statutory laws of Indiana could have had no possible part in said decision, and as a matter of fact did not, for the sole questions raised in said Holt case as shown by the record in this cause (pp. 53-254) relate to the rights of members as fixed by their certificates of insurance and by their legislation and representations.

It was alleged that the increase of rates violated the rights of contract of all fourth class members and were also confiscatory of said certificates of insurance. It was sought on other grounds also to invalidate said rates, and to enjoin the officers from putting them into effect.

An amended answer, in effect, averred that said statute increasing the rates was valid. The reasons for making said enactment were set forth. A cross bill was filed in which said statute increasing rates was again vindicated. (Tr., pp. 249-50.) The validity of said increase of rates was directly put in issue. The Master found the facts especially from the evidence introduced. One of them (p. 210) specially finds that the plaintiff in error did have and did maintain a representative form of government. Said finding (p. 243) found as a fact in favor of the validity of said statute increasing the rates.

The complainant in the Holt Case duly excepted (p. 246) to the finding of the validity of said statute increasing the rates. Said exception and all others were overruled by the court and a judgment rendered in favor of the plaintiff in

error. From said judgment the appeal was taken, resulting in the affirmance of said judgment.

*Holt v. Supreme Lodge Knights of Pythias*, 235 Fed. 885, 149 CCA 197.

An appeal was then taken to the Supreme Court of the United States and was dismissed by the complainants after the decision in the Mims case (248 U. S. 588).

The controlling question in the present case is, what is the effect of this judgment which is now in full force and effect upon the rights of the plaintiff in this case? It is admitted that she occupied the same relation to the plaintiff in error that the insured would have held, if living. Her rights are measured by his rights and duties.

#### FEDERAL COURT RULES.

It is argued by the defendant in error that since the Holt case was commenced January 25, 1911, it was governed by old equity rule 38. Old equity rule 38 had nothing to do with parties. Old equity rule 48 (210 U. S. 508, 524) contained the provision that persons not parties to such suit would not be prejudiced by the judgment. Said rules were in force until February 1, 1913. Equity rules of 1912 became effective February 1, 1913, and provide that they "shall govern all proceedings in cases then pending or thereafter brought," except certain matters not here involved (see Rule 81). Said rule 81 further provides "that all rules heretofore prescribed by the Supreme Court regulating the practice in suits in equity, shall be abrogated when these rules take effect."

Calling the attention of the Court to said Holt case, it was begun January 25, 1911. (Tr., p. 53.) The amended answer was filed February 26, 1912. (Tr., p. 96.) The plaintiff in error's cross bill in said Holt case was filed April 14, 1913 (Tr., p. 125); the answer to said cross bill was filed April 24, 1913. (Tr., p. 204.) The master's report was filed May 24, 1913. (Tr., p. 207.) The judgment was rendered August 8, 1913. (Tr., p. 250.) Said judgment was affirmed on appeal July 18, 1916. (Tr., p. 251.) It, therefore, affirmatively appears that the old equity rules were not in force after February 1, 1913, and that the new equity rules were not in force after February 1, 1913, and that the new equity rules of 1912 governed the decision in the Holt case; and the rights of the parties are to be measured, by said new equity rules.

Said old equity rule 48 and said new equity rule 38 were the subject of a recent opinion of this Honorable Court.

*Supreme Tribe of Ben Hur v. Cauble*, 255 U. S. 356.

In said Cauble case, it was argued that the federal district courts had no real equity jurisdiction sufficient for class suits; that the decrees entered in such cases merely bound the parties on the record but did not conclude the rights of any other person unless a party named on the record. Mr. Justice Day speaking for the Court put an end to such contention in the following language: "The district courts of the United States are courts of equity jurisdiction, with equity powers as broad as those of state courts. That a class suit of this nature might have been maintained in a state court, and would have been binding



on all the class, we can have no doubt. \* \* \* If the federal courts are to have the jurisdiction in class suits to which they are obviously entitled, the decree, when rendered must bind all of the class properly represented. The parties and the subject-matter are within the court's jurisdiction. It is impossible to name all of the class as parties, where, as here, its membership is too numerous to bring into court. The subject-matter included the control and disposition of the funds of a beneficial organization and was properly cognizable in a court of equity. The parties bringing the suit truly represented the interested class. If the decree is to be effective, *and conflicting judgments are to be avoided*, all of the class must be concluded by the decree."

This remarkably well written opinion seems to us to settle this contention that the defendant in error's decedent was not bound by the decree in the Holt case. It was pre-eminently a class suit. The members of this class numbered over eleven thousand. (Tr., p. 294.)

Said decedent having been bound by the judgment in the Holt case and his privies being likewise bound with him, the question yet remains whether his said beneficiary can again litigate the question of the validity of said increase of rates and deny that they are applicable to him.

One of the contentions before the Constitutional Convention of 1787 was the adjustment of probable conflicting interests of citizens of the various states. With a wisdom which appears to have provided for all emergencies, article four, section one, of the federal constitution was drawn requiring "full faith and credit shall be given in each state to the public acts, records, and judicial proceedings of every other state; and the congress may, by general laws, pre-

scribe the manner in which such acts, records, and proceedings shall be proved, and the effect thereof."

Pursuant to the last provision of said Section 1, Congress, in 1790, enacted substantially what is now Section 905, R. S. U. S., providing that "said records and judicial proceedings so authenticated, shall have such faith and credit given to them in every court within the United States as they have by law or usage in the courts of the state from which they are taken."

The judgment of the District Court of the United States was rendered in Indiana; and under said section 905, R. S. U. S. it has the same validity and implications as a judgment of the state court of Indiana, of equal rank.

*Hampton v. McConnel*, 3 Wheat. 234, 4 L. Ed. 378;

*Mills v. Durgee*, 7 Cranch 481, 3 L. Ed. 411;

*Hartford Life Ins. Co. v. Ibs*, 237 U. S. 662.

Under the Indiana law there has been an unbroken current of authority holding that a judgment of a court having jurisdiction of the parties and the subject-matter conclusively binds the parties to said action or suit not only as to matters especially alleged in the pleadings, but as to all matters which might have been litigated within the issues excluding only set-offs and counterclaims which might constitute independent causes of action.

See cases cited under point 13, p. 41, plaintiff in error's brief.

The question was asked on oral argument whether the defendant in error would be concluded by the judgment in the Holt Case if the Nebraska statute was not specially alleged in the bill of complaint. As heretofore stated, the con-

stitution, Article 4, § 1, requires that the judgment of the District Court of Indiana shall be given full faith and credit in the courts of all other states. The implication of said judgment must be given affect.

*Hartford Life Ins. Co. v. Ibs*, 237 U. S. 662.

In the Holt case a direct assault was made upon the validity of the Supreme statute increasing the rates. That was the basic question litigated in that cause of action. Upon that question hinged the judgment of the court. If the assault were successful the complainants must win; if unsuccessful, the defendant must win. The court specially found that such legislation was valid and binding, upon the entire membership of the order. This judgment absolutely concludes all parties and their privies. This confessedly being a class suit is binding upon all members of the order.

If the plaintiff in this action could disregard this judgment and again litigate the validity of this Supreme statutes, then there could be no end to the litigation involving such rates. The plaintiff in error would be hopelessly destroyed. If the plaintiff in error should be compelled to re-litigate the validity of this increase of rates in every action hereafter brought, it would be useless for the society to undertake to transact business. The litigation would be enormous in volume, and its consequence fatal.

## THE CONSTITUTION SUPREME.

Let it be conceded that the defendant in error had the initial right in the trial court to take advantage of the statute of the State of Nebraska rendering the plaintiff in error ineligible to qualify under the Nebraska law.

Let it be conceded further that the state of Nebraska had the right to exclude the plaintiff in error from doing business within said state. Nevertheless, the judgment of the District Court of the United States having jurisdiction of the plaintiff in error and of the parties complainant had the right to enter upon a judicial consideration of the validity of these rates and of their binding character upon the members of this order. The complainants brought the suit. The plaintiff in error here was the enforced defendant. The right of the complainants to be discharged from any obligation under the said new rates was directly and distinctly put in issue. That was the question before the court; and that was the question which the court decided. Its judgment fixed the rights of all parties and their status so fixed by said judgment could not be changed except by an appeal which was unsuccessfully taken. The Federal Constitution provides that this judgment shall be effective and binding upon all parties in every court of the United States. It is not an answer to this contention that the statute of Nebraska provides differently. When there appears to be a conflict between the statutory provisions of the state and any of the provisions of the Federal Constitution, the Constitution prevails. It could not be otherwise. It is a mistake to assert that the decree of the federal court fixed the rights of these parties and then to assert that the rights

fixed in this judgment can be collaterally attacked in some other court. The framers of our Constitution intended to give every party his day in court, but there was a studied provision inserted in our Constitution against giving a party two or more days in court.

#### SPLITTING CAUSES OF ACTION.

The complainants who were offended at the increase of rates enacted in 1910 had a perfect right to go into the courts of the domicile of this corporation and assert their rights and ask for the proper remedy. They did this. Their alleged rights were shown to be wholly without foundation in law or in fact. The supreme statute in question was held valid. They now seek in a wholly collateral proceeding to disregard this judgment and they claim not to be bound in any respect by reason thereof.

They further allege that there is not even a question of constitutional law involved. They fail to recognize that the District Court of the United States with full jurisdiction of all complainants and of this plaintiff in error fixed the rights of these parties, as to the increase of rates, in 1913, and that said judgment forever settled their said rights upon that date. It must be remembered that any rights that the deceased member now has, existed January 1, 1911, at the time these new rates were put into effect. Those rights, whatever they may have been, could have been alleged in this class suit as a reason for invalidating said Supreme Statute increasing the rates. It might be possible if a present ground of defense which did not exist at the

time this class suit was brought, would not be concluded by the judgment of 1913, but no such rights are involved in this case. All rights asserted here existed on January 1, 1911. If the plaintiff in error violated the state laws of Nebraska, at any time, it did it January 1, 1911, at the time the new rates were put into effect. They have been in effect all over the United States and Canada ever since. The plaintiff in error, as shown by this record, refused to receive the old inadequate rate after January 1, 1911.

The cases illustrating this principle are legion. In *People v. Detroit, etc., R. Co.*, 157 Mich. 144, 121 N. W. 814, it is held that one attacking the validity of the charter of a railroad company must make all of his objections thereto or be forever barred.

In *United States, ex rel. v. City of New Orleans*, 98 U. S. 381, the plaintiff recovered a judgment against the city in an action of debt. Subsequently he filed his application for mandamus against the city officers to compel the levy of a tax to pay said judgment. The city then pleaded that the indebtedness was required by a certain state statute to be paid out of a particular fund. It was held that this question must be raised in the original action and the prior judgment concluded the parties on the subject.

In *Mayor, etc., City of Davenport v. United States, ex rel.*, Lord, 76 U. S. 409, 19 L. ed. 704, the plaintiff recovered a judgment against the city in an action on bond issued by the city. Subsequently the plaintiff brought an action in mandamus to effect payment of his judgment. The defendant pleaded, in defense, a statute requiring an election to determine the issuance of bonds, which election was not held.

The court held that such statute constituted a ground of defense in the former action, but was concluded by the judgment.

A case directly in point is *Nautilus v. Philadelphia, etc., Iron Co.*, 270 Fed. 93, decided by the Circuit Court of Appeals for the Second Circuit. The plaintiff was injured while working in a colliery in Pennsylvania. He brought an action in the state court of New York, charging negligence. There was a directed verdict for defendant. Subsequently, he brought an action for the same injuries in the federal court in Pennsylvania, charging defendant's violation of a state statute of Pennsylvania, which had not been pleaded nor considered in the action in New York. The Circuit Court of Appeals held that he was concluded by the New York judgment.

A still more applicable case is *United States v. California & Oregon Land Co.*, 192 U. S. 355, 48 L. ed. 476, wherein the United States, by its bill, sought to have declared void certain land patents. It was answered that theretofore the United States had filed a bill to have such patents declared void, though for an entirely different reason. Mr. Justice Holmes, speaking for the court, said, in part:

"But the whole tendency of our decisions is to require a plaintiff to try his whole cause of action and his whole case at one time. He cannot even split up his claim; \* \* \* and, *a fortiori*, he cannot divide the grounds of recovery. \* \* \* The United States was bound then to bring forward all the grounds it had for declaring the patents void, and when the bill was dismissed, was barred as to all by the decree," citing numerous cases.

In the case of *Payne v. New York, etc., R. Co.*, 201 N. Y. 436, it was held, in a very well-considered decision, that the

plaintiff may state as his cause of action, negligence of defendant as at common law, violation of the New Jersey employers' liability act, and the federal employers' liability act, and failing to allege one or all, he is concluded as to all by the judgment rendered on the one or more pleaded.

### VIOLATION OF THE STATE LAW.

Much stress is laid upon the charge that the plaintiff in error violated the state law of Nebraska. So did the plaintiff in error, according to the decisions of their Supreme Courts, violate the laws of the state of Texas in the Mims case.

*Supreme Lodge Knights of Pythias v. Mims*, 241 U. S. 574.

So did the plaintiff in error violate the laws of the state of New York. *Supreme Lodge Knights of Pythias v. Smyth*, 245 U. S. 594. So did the Royal Arcanum violate the laws of the State of New York: *Supreme Council Royal Arcanum v. Greene*, 237 U. S. 531. So did the Hartford Life Insurance Co. violate the laws of the State of Minnesota: *Hartford Life Ins. Co. v. Ibs*, 237 U. S. 662. So did the Hartford Life Insurance Co. violate the laws of the State of Missouri: *Hartford Life Ins. Co. v. Barber*, 245 U. S. 146. But in all of these cases the state supreme courts failed to give full faith and credit to the respective judgments which was required by our Federal constitution. It should also be remembered in this case that the right of this defendant in error to require the plaintiff in error to have a representative form of government as construed by the Supreme Court of Nebraska, is a private right which she can waive,



or from the exercise of which she may be estopped. This is not an ouster suit brought by the state of Nebraska to expel from its territory an obnoxious corporation. The plaintiff in error, with all due and proper respect to the erroneous decision of the Supreme Court of Nebraska did not violate the laws of said state by the enactment of the increase of rates herein questioned. The Federal Statutes requiring that our constitution and supreme statutes and the amendments thereto shall not violate the laws of the United States, nor the laws of any state, did not and does not mean that said constitution or statutes shall be void if the plaintiff in error should fail to qualify in order to do business within any particular state. In such a case the statute would not be invalid. It would simply be temporarily suspended. The State of Nebraska has no jurisdiction of the activities of the plaintiff in error except as it may undertake to qualify to do business within said state. At the time of the passage of the statute creating this plaintiff in error there was more or less misgivings on the part of the people of many states that a corporation chartered by the federal government could impose itself upon any and all of the states of the union, without their consent and could transact business regardless of state laws. To obviate any feeling of this kind the wording of this statute was so made. While it is a proper jurisdiction of the courts of the various states to pass upon the question whether the constitution and supreme statutes of this plaintiff in error are effective within such states, the final jurisdiction as to the validity of the constitution and statutes of this plaintiff in error rests with the highest court of its domicile, and that is this Honorable Court. When this Honorable Court has adjudged a supreme

statute of this plaintiff in error to be valid and binding, such decision is final. This does not prevent any state from excluding the plaintiff in error even after such decision is made, from prohibiting the plaintiff in error from transacting business within such state. The real substantial meaning of that phrase in the federal statute that the plaintiff in error shall not enact any legislation in violation of the laws of any state simply means that the plaintiff in error can not, because of its federal charter, transact business in a state where such state has by its statutes excluded it from so doing, but the defendant in error is not the state of Nebraska and can not vindicate the rights of the state. She may vindicate her own rights only. And her rights are exactly those of her decedent who held the certificate of insurance sued upon. Her rights are measured by his rights and his rights were concluded in 1913 by the judgment of a court of competent jurisdiction, and that adjudication is fully covered and protected by the federal constitution. The rights of citizens under the constitution are superior to their rights under the states whether in violation of judicially declared law, or of statutory duty. This is well illustrated by the case of *Fauntleroy v. Lum*, 210 U. S. 230. In that case a cause of action was alleged to have originated in Mississippi. The statute of Mississippi forbade the bringing of any action by reason of the facts alleged. The plaintiff, however, brought the action in the State of Missouri, instead of Mississippi, where the cause arose. He obtained judgment in Missouri. He then brought his action upon said judgment in the courts of Mississippi. The Mississippi Supreme Court (80 Miss. 737), promptly held that since by their statute said alleged cause of action was for-

bidden by their said statute, no cause of action could be alleged upon a judgment recovered in Missouri, upon the same facts; but this Honorable Court held that such question was not controlling in view of the full faith and credit clause of the Federal Constitution which was superior to any alleged rights under the statute of Mississippi which was alleged to have been violated. To the same effect was the case of *Kenney v. Supreme Lodge of the World, Loyal Order of Moose*, 252 U. S. 411. In that case the cause of action arose in the State of Illinois. A statute of Illinois expressly provided that such a cause of action could not be brought in Illinois. It, therefore, refused to sanction an action upon the judgment for said cause rendered by the courts of Alabama. This Honorable Court, however, properly reversed said judgment holding that the constitutional right was superior to the rights of said parties under and by virtue of such statutory provisions. The plaintiff in this action sought recovery on an offer of payment of the old rate after January 1, 1911. The defendant proved the enactment of a supreme statute in 1910, effective January 1, 1911, increasing the rates. Plaintiff assaulted the validity of this supreme statute on the ground that defendant did not have a representative form of government at the time the statute was enacted, as required by Nebraska statute. Defendant pleaded and introduced in evidence the pleadings and judgment in the Holt case, showing a class suit, binding plaintiff's decedent and litigating the validity of said statute and the question of the representative form of government, the judgment being favorable to the validity of said statute and also to the question of representative form of government. The courts of said State of Nebraska ut-

terly ignored said judgment, giving neither faith nor credit to it. Our constitutional rights were disregarded and judgment given against plaintiff in error in utter disregard thereof. Under Article 4, § 1, the validity of said supreme statute and its binding effect were settled and the defendant in error can not again litigate the validity of said supreme statute. We must insist, therefore, that the constitutional rights of the plaintiff in error have been overthrown and that its rights fixed by said judgment of the federal district court, affirmed by the Circuit Court of Appeals, have been disregarded and that the rights of the plaintiff in error under the federal constitution be vindicated.

Respectfully submitted,

T. P. LITTLEPAGE,

W. J. CONNELL,

GEORGE A. BANGS,

SOL H. ESAREY,

WARD H. WATSON,

*Attorneys for Plaintiff in Error.*

SUPREME LODGE, KNIGHTS OF PYTHIAS, *v.*  
MEYER.ERROR AND CERTIORARI TO THE SUPREME COURT OF THE  
STATE OF NEBRASKA.

No. 214. Argued March 12, 1924.—Decided April 28, 1924.

1. While proceedings in the federal courts are not within the terms of Art. IV, § 1, of the Constitution, they nevertheless must be accorded the same full faith and credit by state courts as would be required in respect of the judicial proceedings of another State. P. 33.
  2. Where statutes of two States, couched in the same terms, receive different constructions by the courts of their respective localities, the constructions become parts of the respective statutes, which are to be treated accordingly as different laws. P. 34.
  3. In an action to recover insurance under a benefit certificate, issued by a fraternal order created by an act of Congress which provided that its constitution, and the amendments thereof, should not conflict with the laws of any State, a defense based on the refusal of the insured to pay increased dues as required by an amendment adopted by the order, was overruled by the Supreme Court of Nebraska upon the ground that the order had not a "representative form of government" within the meaning of a statute of Nebraska in force when the new rates were adopted.  
*Held:*
    - (a) The meaning attributed by the Nebraska Supreme Court to the Nebraska statute must be accepted by this Court, on review, as though it had been specifically expressed in the statute. P. 32.
    - (b) A decree of the federal court in Indiana, holding that the order had a "representative form of government" within the meaning of a similar statute of that State, was not binding in the Nebraska litigation, because the two issues—the meaning of the Nebraska statute and the meaning of the Indiana statute—were not the same. P. 33.
  4. Under Jud. Code, § 237, as amended by the Act of September 6, 1916, certiorari and not error is the remedy to review a state decision on a right claimed under a federal statute or authority, where the validity of the statute or authority itself is not in question. P. 36.
- 109 Neb. 108, affirmed.

ERROR and certiorari to a judgment of the Supreme Court of Nebraska affirming a judgment for the plaintiff, Meyer, in an action to recover insurance under a benefit certificate issued by the plaintiff in error.

*Mr. W. J. Connell* and *Mr. Sol H. Esarey*, with whom *Mr. T. P. Littlepage*, *Mr. George A. Bangs* and *Mr. Ward H. Watson* were on the brief, for plaintiff in error.

*Mr. D. W. Livingston*, with whom *Mr. C. F. Reavis* was on the brief, for defendant in error.

MR. JUSTICE SUTHERLAND delivered the opinion of the Court.

This case is here on error and also upon petition for writ of certiorari. Consideration of the latter was postponed until hearing on the merits.

Defendant in error was the beneficiary named in a benefit certificate of life insurance issued to one of its members, by the plaintiff in error, a fraternal order created by Act of Congress of June 29, 1894, c. 119, 28 Stat. 96. Upon the death of the assured an action was brought in a state court by the beneficiary to recover the amount of the insurance, and judgment was rendered in his favor. On appeal to the State Supreme Court the judgment was affirmed on the authority of the decision of the same court on a former appeal.

After the insurance policy had gone into effect, the Supreme Lodge, by an amendment, increased the dues from \$5.70 per month to \$26.30 per month. Prior to the effective date of the new rates the assured had paid all dues assessed under the old rates. After such date he refused to pay at the new rates, upon the ground, among others, that in disregard of a state statute, the society was not operating under a representative form of government when the rates were increased; but he regularly and duly tendered payment at the old rates.

Section 4 of the Congressional Act provides: "That said corporation shall have a constitution, and shall have power to amend the same at pleasure: *Provided*, That such constitution or amendments thereof do not conflict with the laws of the United States or of any State." A statute of Nebraska in force at the time the new rates were adopted, defines a fraternal benefit society as a corporation, etc., organized and carried on for the sole benefit of its members and their beneficiaries and not for profit, and provides: "Each such society shall have a lodge system, with ritualistic form of work and representative form of government." § 1, c. 47, Laws of 1897, p. 266.

According to the stipulation of facts, the Supreme Lodge when it made the amendment increasing rates, "was composed of 163 members and that of such members, nine were Past Supreme Chancellors and eight were Supreme Officers of the defendant; 98 were holders of certificates in the Insurance Department and 146 were delegates elected by the various Grand Lodges within the order;" all of whom participated in enacting the amendment. On the first appeal, the State Supreme Court, after a full discussion of the question and of the facts, and a review of its earlier decisions, held that the body, above described, did not constitute a representative form of government, within the meaning of the state statute. 104 Neb. 505. Upon rehearing the court adhered to this conclusion, *Id.* 511; and, upon the second appeal, again affirmed it. 109 Neb. 108.

Under the settled rule of this Court, declared so frequently and uniformly as to have become axiomatic, we must accept this decision of the highest court of the State fixing the meaning of the state legislation, as though such meaning had been specifically expressed therein. See, for example, *Leffingwell v. Warren*, 2 Black, 599, 603; *Green v. Lessee of Neal*, 6 Pet. 291, 297-300. And we follow

the state construction even though it may not agree with our own opinion. *Supervisors v. United States*, 18 Wall. 71, 82. *Shelby v. Guy*, 11 Wheat. 361, 367; *Tioga R. R. v. Blossburg & Corning R. R.*, 20 Wall. 137, 143. No question is raised as to the necessity for compliance with the provisions of the state statute; but the defense pleaded and relied upon is that the matter was concluded by a decree of the Federal District Court of Indiana, affirmed by the Circuit Court of Appeals, *Holt v. Supreme Lodge Knights of Pythias*, 235 Fed. 885, establishing the validity and enforceability of the increased rates; that such decree was binding, as *res adjudicata*, upon Meyer, the plaintiff; and that the court below, in declining to so consider it, denied full faith and credit to the judicial proceedings of another State, in contravention of Art. IV, § 1, of the Constitution of the United States and of § 905, Revised Statutes.

While the judicial proceedings of the federal courts are not within the terms of the constitutional provision, such proceedings, nevertheless, must be accorded the same full faith and credit by state courts as would be required in respect of the judicial proceedings of another State. *Hancock National Bank v. Farnum*, 176 U. S. 640, 644; *Embry v. Palmer*, 107 U. S. 3, 9. It appears from the record in the *Holt Case*, which was in evidence and is in the record here, that the court expressly found that the society was, during its entire existence, operating under a representative form of government. We assume, for present purposes, that the plaintiff is bound by that decree; but the question—and the vital question—still remains, is the issue the same? We are of the opinion that it is not the same and that the plea of *res adjudicata* fails.

The principal place of business of the order was in Indiana; and the question presented in the *Holt Case*, which was brought in Indiana, evidently was whether



there was a representative form of government within the meaning of the statute of that State, § 5043, 2 Burns' Indiana Stats., 1914, p. 882, since the federal statute made no requirement on the subject, and the finding, unless to satisfy the Indiana law, would have been meaningless. The question of compliance with the statute of Nebraska or those of other States was not involved. The Indiana statute is reproduced in the margin,<sup>1</sup> and, as will be seen, differs from the Nebraska statute in that the former specifically defines what shall constitute a representative form of government, while the latter does not. But if we assume, for the moment, that the two statutes are alike, nevertheless, our determination must be the same. It was within the competency of the federal court to construe the Indiana statute in one way, and it was equally within the competency of the Nebraska Supreme Court to construe the Nebraska statute in an opposite way; and, since the construction becomes part of the statute and is to be read as though in its text, in the one case as in the other, the result is that they are, in effect, not the same, but different

---

<sup>1</sup> § 5043. ". . . Each association shall have a lodge system with ritualistic form of work and a representative form of government. Any association having a supreme governing or legislative body and subordinate lodges or branches by whatever name known, into which members shall be elected, initiated and admitted in accordance with its constitution, laws, rules, regulations, and prescribed ritualistic ceremonies, which subordinate lodges or branches shall be required by such association to hold regular or stated meetings at least once in each month, shall be deemed to be operating under the lodge system. Any association shall be deemed to have a representative form of government when it shall provide in its constitution and laws for a supreme legislative or governing body, composed of representatives elected either by the members or by delegates elected by the members through a delegate convention system, together with such other members as may be prescribed by its constitution and laws: *Provided*, That the elective representatives shall constitute a majority in number and have not less than a majority of the votes, nor less than the votes required to amend its constitution and laws . . . ."

30

Opinion of the Court.

statutes. In *Christy v. Pridgeon*, 4 Wall. 196, 203, this Court said:

"Nor does it matter that in the courts of other States, carved out of territory since acquired from Mexico, a different interpretation may have been adopted. If such be the case, the courts of the United States will, in conformity with the same principles, follow the different ruling so far as it affects titles in those States. The interpretation within the jurisdiction of one State becomes a part of the law of that State, as much so as if incorporated into the body of it by the legislature. If, therefore, different interpretations are given in different States to a similar local law, that law in effect becomes by the interpretations, so far as it is a rule for our action, a different law in one State from what it is in the other."

In *Louisiana v. Pilsbury*, 105 U. S. 278, 294, it was said:

"So far does this doctrine extend, that when a statute of two States, expressed in the same terms, is construed differently by the highest courts, they are treated by us as different laws, each embodying the particular construction of its own State, and enforced in accordance with it in all cases arising under it." *Shelby v. Guy*, *supra*; *May v. Tenney*, 148 U. S. 60, 64; *Detroit v. Osborne*, 135 U. S. 492, 498; *Chicago Union Bank v. Kansas City Bank*, 136 U. S. 223, 235. It follows that there is not identity of issue in the two cases, since, so far as this Court is concerned, the statutes which determine it are of exactly opposite import. In principle, it is the same as though the Indiana statute, which controlled the question decided in the first suit, had been superseded by a later Indiana enactment to the contrary effect, and a second suit, arising under and controlled by the later enactment, was brought, involving the same question. The intervention of the new and antagonistic statute in either case furnishes a new basis for the litigation, and the issue is no longer the same. *Memphis City Bank v. Tennessee*, 161 U. S. 186,

192; *Utter v. Franklin*, 172 U. S. 416, 424; *Erskine v. Steele County*, 87 Fed. 630, 636; affirmed 98 Fed. 215, 220.

Prior decisions of this Court are pressed upon our attention, of which *Supreme Lodge, Knights of Pythias v. Mims*, 241 U. S. 574, and *Supreme Council of the Royal Arcanum v. Green*, 237 U. S. 531, are examples. They are not in point. Neither the effect of state statutes imposing conditions like the one here under review, nor the question in respect of identity of issue, upon which the plea of *res adjudicata* in the present case turns, was involved or considered.

Under § 709, Revised Statutes, Jud. Code § 237, this case would be properly here upon writ of error, *Pittsburgh, &c. Ry. Co. v. Long Island Loan & Trust Co.*, 172 U. S. 493, 508; *Hancock National Bank v. Farnum*, *supra*; *Embry v. Palmer*, *supra*; but, as amended by the Act of September 6, 1916, c. 448, 39 Stat. 726, the remedy is by certiorari. We therefore dismiss the writ of error, grant the petition for certiorari, *Yazoo & M. V. R. R. Co. v. Clarksdale*, 257 U. S. 10, 15-16; and, for the reasons given above, affirm the judgment of the State Supreme Court.

*Affirmed.*

The separate opinion of MR. JUSTICE McREYNOLDS.

Claiming as beneficiary, Meyer brought an action upon a policy issued by the Supreme Lodge in the District Court, Otoe County, Nebraska.

The declaration alleges: "That the defendant is, and at all times herein mentioned was, a fraternal order or organization maintaining a life insurance department for its members, organized and existing under an act of the United States Congress, in the District of Columbia, and having its principal offices and place of business in the City of Indianapolis, in the State of Indiana, and duly authorized to transact its business in the State of Nebraska. That on and prior to the 11th day of June, 1885,

Louis J. Meyer, a resident of Otoe County, Nebraska, was a member of a subordinate lodge of the defendant, and on said date the said defendant issued and delivered to the said Louis J. Meyer in Otoe County, Nebraska, its membership certificate No. 4651, by the terms of which it insured the life of the said Louis J. Meyer in the sum of \$2,000.00, and agreed in the event of his death to pay that sum to a beneficiary therein named. That on or about the 31st of May, 1910, the said Louis J. Meyer surrendered said certificate to the defendant for the sole purpose of changing the beneficiary therein named, and thereafter the defendant issued in lieu thereof to the said Louis J. Meyer its certificate of membership dated June 30, 1910, numbered 4651, insuring the life of the said Louis J. Meyer in the sum of \$2,000.00, by the terms of which the defendant agreed that in the event of the death of the said Louis J. Meyer to pay to George O. Meyer, this plaintiff, the sum of \$2,000.00, a copy of which membership certificate is hereto attached, marked Exhibit 'A,' and made a part hereof." And further that the assured died April 11, 1916, after performing all things required of him.

Certificate No. 4651—Exhibit A—recites that Louis J. Meyer had been accepted as a member of the insurance department and the Supreme Lodge promised to pay the designated beneficiary two thousand dollars, subject to certain conditions and payment of \$5.70 each month. Also, "the member holding this certificate shall make all monthly payments as they may be due from him, and also make any extra or special monthly payments required from him. . . . His rate of contribution hereunder may be changed, increased or adjusted at any time in accordance with the laws of this society when deemed necessary to carry out the purposes of the insurance department."

The defense was that by a duly adopted rule, or law, the Supreme Lodge had increased the monthly rates for

the time subsequent to January 1, 1911, and assured had refused to pay them.

The act of Congress which incorporated the Supreme Lodge among other things provided, "That said corporation shall have a constitution, and shall have power to amend the same at pleasure: *Provided*, That such constitution or amendments thereof do not conflict with the laws of the United States or of any State." Act of June 29, 1894, c. 119, 28 Stat. 96, 97. Under this federal charter it might amend its statutes, or by-laws; and the change of rates was effective unless prohibited by statute as to Nebraska members. The obligation of the contract between the lodge and the assured presents a question of federal law. *Supreme Council of the Royal Arcanum v. Green*, 237 U. S. 531; *Hartford Life Insurance Co. v. Ibs*, *id.* 662; *Supreme Lodge, Knights of Pythias v. Mims*, 241 U. S. 574. This is plain under the last cited case, which reviewed and reversed the judgment of the Texas court denying the validity of the by-law here questioned.

The court below held that under c. 47, Laws of Nebraska, 1897, the action of the Supreme Lodge in undertaking to increase rates was without effect because the association did not have a "representative form of government." And this makes it necessary to inquire whether that act is fairly susceptible of the construction adopted by the state court. Generally this Court accepts the construction of a local statute approved by the state court of last resort, but the rule does not apply where this is fanciful and amounts to a mere subterfuge. *Leathe v. Thomas*, 207 U. S. 93, 99; *Vandalia R. R. Co. v. South Bend*, *id.* 359, 367; *Enterprise Irrigation District v. Canal Co.*, 243 U. S. 157, 164; *Superior Water Co. v. Superior*, 263 U. S. 125, 136.

Chapter 47 contains twenty-four sections. The first declares: "A fraternal beneficiary association is hereby

declared to be a corporation, society or voluntary association, formed or organized and carried on for the sole benefit of its members and their beneficiaries, and not for profit. Each such society shall have a lodge system, with ritualistic form of work and representative form of government." The remaining sections relate to the organization and government of domestic corporations and provide for reports by and the licensing and duties of such corporations when organized in other States. Section 16: "Any such association refusing or neglecting to make the report as provided in this act shall be excluded from doing business within this state. The auditor of public accounts must, within sixty days after the failure to make such report, or in case any such society shall exceed its powers, or shall conduct its business fraudulently, or shall fail to comply with any of the provisions of this act, give notice in writing to the attorney general, who shall immediately commence an action against such society to enjoin the same from carrying on any business. . . ." There is nothing in the act which excludes an association with a government like that of plaintiff in error. It does not undertake to invalidate contracts of such companies after licenses have been issued to them. Nor do I find that the laws of the State inhibited the auditor from licensing an association with a non-representative form of government.

It is stipulated and agreed "that the defendant [plaintiff in error] is a fraternal order or organization, maintaining a life insurance department for its members, existing under an act of the United States Congress in the District of Columbia, having its principal place of business in the City of Indianapolis and State of Indiana, and authorized to transact business in the State of Nebraska during the period covered by the pleadings in this case." With knowledge of its form of government the duly designated official licensed it to do business within the State.

Attributing a fanciful meaning to the term "representative form of government," the court below declared that the challenged by-law was not adopted as required by the Nebraska statute and therefore was without force within that State. This was the excuse offered for annulling an agreement entered into by an association incorporated under federal law and duly licensed by the State.

A view of the statute is enough to show that it did not undertake to prescribe rules for the internal government of foreign corporations licensed to do business within the State or to control agreements between such corporations and their members.

Moreover, it seems impossible reasonably to conclude that plaintiff in error had no "representative form of government" because a few officers, by virtue of their positions, constituted a small minority (10%) of the law-making body, otherwise composed of elected representatives. And certainly the conclusion of the court is not strengthened by the opinion which advances the following as the reason therefor:—"To retain the exercise of governmental authority in the hands of the people is the modern trend. Extended argument is not needed to establish this fact. Witness the election of United States senators by direct vote; the direct primary; and the initiative and referendum. Fraternal societies are no exception to the rule."

In the circumstances I think we should refuse to accept a ruling so obviously contrary to reason, treat it as a mere subterfuge, and hold that under *Supreme Lodge, Knights of Pythias v. Mims*, *supra*, the rates were properly increased and by failing to pay them the assured surrendered all rights under the policy.